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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-21-1999

Reported in : (2000)(116)ELT171TriDel

Appellant : Mercury Confectioners and Allied

Respondent : C.C.E.

Judgement :

1. Appellants filed this appeal against the order-in-appeal dated 19-5-1998 passed by the Commissioner of Central Excise (Appeals).

2. Brief facts of the case are that on 8-7-1996 at 5.00 P.M., officers of the Revenue Department intercepted a truck No. UGL 434 carrying 103 cardboard boxes and 340 plastic bags of biscuits of Mercury brand under the cover of Invoice No. 188, dated 8-7-1996 of M/s. Mercury Confectioners and under Bill No. 279, dated 8-7-1996 of S.N.Enterprises for 38 cardboard boxes and 340 plastic bags of biscuits. On investigation, it was found that, in fact, all the goods were cleared from the factory of appellants and no goods were cleared by M/s. S.N.Enterprises. Therefore, a show cause notice was issued to the appellants for confiscating the goods and for imposing penalty. After adjudication, the goods along with truck were confiscated and the goods were released on payment of redemption fine of Rs. 15,000/- and penalty of Rs. 10,000/- was imposed. Appellants filed appeal and the same was rejected.

3. Ld. Counsel submitted biscuits contained in 29 cardboard boxes were cleared on payment of duty from appellant's factory. He submits that 340 plastic bags of biscuits were claimed by M/s. S.N. Enterprises, which is a trading concern. He submits that the appellants cleared their biscuits on payment of duty vide Invoice-cum-Challan Nos. 189 and 190, dated 8-7-1996. Thereafter, under the invoice of M/s. S.N. Enterprises, these goods were sent to customers when the goods were intercepted by the Revenue Officer.

4. He, further, submits that in the show cause notice, the value of goods was mentioned as Rs. 30,095.00 whereas the goods worth Rs. 58,358.00 were confiscated. Hence the adjudication order is beyond the scope of show cause notice.

6. Ld. DR submits that the plea of the appellants is that biscuits covered under the invoice of M/s. S.N. Enterprises is not correct. He relies upon the invoice under which these goods were cleared to M/s.

S.N. Enterprises. He submits that the goods were intercepted at 5.00 P.M. on 8-7-1996 whereas the clearance from appellant's firm to M/s.

S.N. Enterprises was shown at 5.20 P.M.. He, therefore, submits that this plea is after thought. He prays for dismissal of the appeal.

8. The contention of the appellants in respect of the goods covered under the invoices of M/s. S.N. Enterprises is that this firm is a trading firm and the appellants cleared the goods, in question, to trading firm on payment of duty under invoice Nos. 189 and 190, dated 8-7-1996. The time of removal of the goods from appellant's factory to M/s. S.N. Enterprises was shown as 5.20 P.M. on 8-7-1996 whereas the goods, in question, were seized at 5.00 P.M. on 8-7-1996. Therefore, I find no force in the plea of the appellants.

9. In respect of the argument in the show cause notice, the value of goods was mentioned less than the goods ordered to be confiscated. I find force in the arguments. Therefore, the redemption fine is reduced to Rs. 5,000/- from Rs. 15,000/- and the penalty is reduced to Rs. 2,000/- from Rs. 10,000/-. Otherwise,

the impugned order is upheld.

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