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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-16-2000

Reported in : (2000)(120)ELT718TriDel

Appellant : A.M. Industries

Respondent : Commissioner of Central Excise

Judgement :
Central Excise Officers visited the appellants' premises on 24-9-1997 and found a shortage of 12 tractor rims and also 143 crane rims vis-a-vis the recorded balance in RG-1 register. The proceedings of the visiting officers were witnessed by one of the partners of the appellants firm, viz. Vijay Kumar, who admitted the shortage as found by the officers. The Central Excise duty on 12 tractor rims and that on the 143 crane rims found short, amounting to Rs. 324/- and Rs. 30,888/- respectively, were paid on the same day by way of appropriate debits in the appellants RG-23A Part II. The Department proposed to confirm such duty and to impose penalty on the appellants on the ground of alleged contravention of Central Excise Rules. They alleged that the goods found short had been removed clandestinely without payment of Central Excise duty and without following Central Excise procedure as laid down by the relevant Rules. The appellants contested the allegations of the Department contained in the show cause notice. The dispute was adjudicated by the jurisdictional Assistant Commissioner who confirmed the demand of duty of Rs. 324/- and Rs. 30,888/- and also imposed a penalty of Rs. 5,000/- under rule 9(2) and Rule 173Q of the Central Excise Rules. The appeal filed against the order

of the Assistant Commissioner was rejected by the Commissioner (Appeals) who endorsed the findings of the lower authority and upheld the order of that authority. The present appeal by the party is against this order of the Commissioner (Appeals).

2. I have carefully examined the orders of the lower authorities and connected records. I have also heard Shri Alok Arora, learned Advocate for the appellants and Shri A.K. Jain, learned JDR for the respondent.

3. Learned Advocate has reiterated the grounds of the appeal and has submitted that the adjudicating authority did not at all consider the fax message dated 25-9-1997 and the subsequent letter dated 26-9-97 sent on behalf of the appellants by Shri Vijay Kumar. In the fax message as well as in the letter, the appellants had stated that the rims in question were actually lying in the factory but were not noted by the visiting officers. They had also stated to the effect that the rims had been kept for painting and subsequent supply to original manufacturers of excavator, crane, tractors etc.... Learned Advocate submits with emphasis that the Department, on receipt of the fax message and letter, ought to have conducted a physical verification to ascertain the veracity of the facts pleaded by the appellants in the fax message and the letter. He submits that the wheel rims were subsequently painted and removed on payment of duty and thereby the appellants paid duty on the same goods twice. Learned Advocate has, in support of the appellants plea for a reverification by the Department, relied on the decision of this Tribunal in the case of Triveni Engineering Works v. Collector of Central Excise, Allahabad [2000 (116) E.L.T. 252 (T)]. Learned Advocate contends that the order passed by the adjudicating authority without considering the appellants' request for reverification and also the order of the lower appellate authority upholding the order of adjudication cannot be sustained. He prays for allowing the appeal on these grounds.

4. Learned JDR, opposing the above submissions, has submitted that the shortage in question was admitted by the appellants and the payment of Central Excise duty on the goods found short was also done by them on the very same day. He has laid stress on the point that the attention of the visiting officers was

not drawn by Shri Vijay Kumar to the wheel rims allegedly lying in some part of the factory. The plea of the appellants that the rims were lying in the painting room during the visit of the officers is an afterthought and the findings of the adjudicating authority to this effect cannot be faulted, according to the learned JDR. He has prayed for rejecting the appeal.

5. I have carefully examined the rival submissions. I note that the shortage detected by the officers was accepted by the appellants. Their only defence against the orders of the lower authorities is that the goods were actually lying in the factory for the purpose of painting before their removal. Their further case is that Shri Vijay Kumar was not the proper person dealing with Central Excise matters and was not aware of the goods lying in the factory at the time of the officers' visit. However, it is the said very same Shri Vijay Kumar who sent fax message and the letter to the Assistant Commissioner stating the appellants' explanation vis-a-vis the detection of shortage. In the light of this fact, the appellants cannot be heard to say that Shri Vijay Kumar was not aware of the Central Excise matters. It was Shri Vijay Kumar himself who debited the duty amount in the RG-23 register.

However, there was no explanation before the adjudicating authority by way of any affidavit from Shri Vijay Kumar. An affidavit was given by his co-partner who was away from the factory at the time of the visit of the officers. This affidavit was also considered by the adjudicating authority while coming to the conclusion that the explanation offered by the appellants was not acceptable. The 'Case relied on by the learned Advocate has been persued by me. In that case, shortage of certain goods had been noted by the officers who visited the appellants' factory. The appellants had raised an objection to the effect that the said goods were actually lying scattered in the factory, whereupon officers were deputed by the Department for reverification of the stock. Learned Advocate has laid emphasis on these facts of Triveni Engg. Works. However, it is not clear from the facts of this case as to whether the goods in question were in a finished stage or not or whether the reverification was done by the officers on the same day or later. In the instant case, the request for reverification was submitted to the Assistant Commissioner on 25-9-1997 and 26-9-1997 by way of the fax message and letter respectively.

Even if the officers had visited the factory pursuant to such request, it would not have necessarily led to any conclusion inasmuch as the rims could have, by that time, undergone further processing by way of painting etc. It is also pertinent to note that the appellants had accounted for the un-painted rims in the RG-I register for which they have no explanation.

6. On a careful consideration of the entire facts and circumstances of the case, I do not see any reason to interfere with the orders of the lower authorities with regard to the confirmation of the demand of duty. As regards, the penalty imposed on the appellants, however, it appears that there is no cogent reasons stated by the lower authorities for imposition of a penalty of Rs. 5,000/-. The goods found short were already accounted for in the RG-I register, albeit before completion of manufacture. This irregularity is not an offence as serious as non-accountal of finished goods in the statutory record. Violation of any other Rules apart from Rule 53 of the Central Excise Rules has not been established by the lower authorities. In view of this matter, the penalty has been imposed unreasonably and I set aside the same.

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