

Universal Construction and Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-08-2000

Reported in : (2000)(120)ELT386TriDel

Appellant : Universal Construction and

Respondent : Commr. of C. Ex.

Judgement :

1. Show cause notice was issued to M/s Ram Ply Board Industries (P) Ltd. and the appellant herein, inter alia, alleging that the transaction between M/s Ram Ply Board Industries and the appellant herein was not a genuine transaction falling under Section 4(1) (a) because the appellant was only a commission agent. This allegation in the show cause notice was contested by the appellant. But, the adjudicating authority, by Order-in-Original No. 18/ADC/98, dated 4-5-1998, imposed a penalty of Rs. 8,03,696/- on the appellant invoking the provisions contained in Rule 209A of the Central Excise Rules, 1944. By that order, adjudicating authority confirmed the demand of Rs. 8,03,696/- as duty short levied and similar amount by way of penalty under Rule 9(2), 52(a)(8) and 173Q of the Rules on M/s. Ram Ply Board Industries. M/s. Ram Ply Board Industries got the adverse order settled under Kar Vivad Samadhan Scheme. Appellant herein challenged that part of the order under which penalty has been imposed by preferring appeal before the appellate authority namely, Commissioner (Appeals). That appeal happened to be disposed of by order-in-appeal No. 425-CE/MRT/99, dated 6-5-1999 by reducing the penalty to Rs. 1,50,000/-. For a proper

understanding of the order, we read last two paragraphs :- "Submissions made by the appellants that they had not worked as a commission agent are convincing. But howsoever convincing be these submissions in view of having made an application under KVSS scheme by the main accused M/s Ram Ply Board Industries (P) Ltd., Kotdwar in the case, to the Commissioner, Central Excise, Meerut, allegations made against them in the show cause notice, seem to have been accepted. Otherwise, a person falsely implicated would fight for the justice upto the last. He would not easily give up like this. With this action of main accused in the case, involvement of the accomplice automatically gets proved. Filing of an application by the main noticee under KVSS scheme was intimated by the appellants vide their letter dated 25-12-1998 through their Advocate Sri C. Hari Shankar.

Since, full duty liability was not discharged on the goods, the goods were liable for confiscation. Accordingly action under Rule 209A against the appellants, in view of above facts, also seems justified. Further, since the main noticee with the filing of application under KVSS scheme will be liable to payment of 50% of duty adjudged, with amount of penalty imposed totally let off, a person booked under the provisions of Rule 209A of the Central Excise Rules 1944 only, deserves a softer hand. Taking into consideration all the circumstances I feel a penalty of Rs. One lac and Fifty Thousand only will be sufficient to meet the ends of justice in this case." The conclusion reached by the appellate authority in the above two paragraphs is under challenge.

2. While disposing of the appeal, the Commissioner posed three issues for consideration. The second issue was "whether the appellant was commission agent or not" and the third issue was "whether the appellants have actively and consciously dealt with the goods which they knew were undervalued and on which appropriate duty of excise as per their sale value was not paid".

3. Dealing with the second issue, the Commissioner came to the finding that the submission made by the appellants that they were not working as commission agent is convincing. This shows that the Commissioner categorically found that they were not the commission agents. In the face of such a finding, we are at a

loss to understand as to how the Commissioner sustained the penalty under Rule 209A of the Central Excise Rules, 1944, specially when the Commissioner did not render any finding on the third issue raised for consideration. Without a finding on the third issue which was posed for decision, the Commissioner could not have sustained a penalty invoking the provision contained in Rule 209A. On this ground, the penalty imposed on the appellant has to be vacated. We do so.

4. The fact that M/s Ram Ply Board Industries (P) Ltd. settled the dispute with the department on Kar Vivad Samadhan Scheme cannot be taken as a circumstance against the appellant. Admission of guilt, if any by M/s Ram Ply Board Industries, cannot, in any way, be taken as a situation making the present appellant also liable for any offence under the excise law.

5. In view of what has been stated above, the appeal is allowed in the terms indicated above. The amount deposited pursuant to the orders of this Tribunal as condition for entertaining the appeal under Section 35F will be refunded to the appellant forthwith.

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