

Commissioner of Central Excise Vs. Gurind India (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-17-2000

Reported in : (2000)(121)ELT117TriDel

Appellant : Commissioner of Central Excise

Respondent : Gurind India (P) Ltd.

Judgement :

1. The facts in brief in this appeal are that M/s. Gurind India (P) Ltd., Noida - the respondents herein, manufacture glass products falling under SH No. 70. Their factory premises were visited by the Central Excise officers on 18-10-93. On stock verification of the finished goods, the following discrepancies were noticed: (i) 57.91 Sqmt. of (ascertained) quantity of glass panel equivalent to 400.108 Sqmt. per mm thickness of glass valued at Rs. 29,415/-was found in excess of the recorded balance in their RG 1 Register.

(ii) 412.62 Sqmt. of (ascertained) quantity of glass panel involving Central Excise duty of Rs. 21,432.35 was found short.

2. The aforestated excess quantity of glass panel was seized. The party was issued show cause notice and after considering the reply of the party, the Assistant Commissioner of Central Excise, Division I, Noida ordered for the confiscation of excess quantity of glass panel. He, however, allowed the redemption of the same on payment of a fine of Rs. 8,000/-. He further confirmed the duty of Rs. 21,432.35 on their assorted glass found short. He also imposed a

penalty of Rs. 5,000/- on the party.

3. The party filed an appeal against the above order before Commissioner (Appeals), Ghaziabad. The appellate authority - but for upholding the penalty amount, allowed the appeal of the party setting aside the order passed by the Assistant Commissioner.

4. The Revenue is in appeal against the aforesaid order of Commissioner (Appeals). I have heard Shri Y. R. Kilania, JDR for the appellants and Shri Naveen Mullick, Advocate for the respondents. It is contended in the Revenue appeal that accountal in RG 1 Register is a statutory requirement. Therefore, the non-accountal of the finished goods in the statutory records is not purely of technical nature - as observed by Commissioner (Appeals) in his order is not correct. As regards the setting aside the demand of duty for the finished goods found short, it is pleaded that the relief has been granted to the party on the grounds that the goods are of fragile nature and subject to damage, breakage etc. But even in such case, the remission of duty should have been sought under the relevant provisions of the Central Excise Rules.

5. I have carefully considered the submissions made before. The Commissioner (Appeals), in his order dated 6-6-96 in this case, has granted relief to the party in following terms : "I have gone through the records of the case and considered the matter. It is a fact that product of the appellant i.e. glass is fragile in nature and occurrence of breakage, damage, scratch etc.

is a common feature and further that nobody can escape from these situations. As regards shortage of the goods it is evident from the statement of the appellant recorded on the date of visit of checking that the goods found short were shown to the visiting central excise officers and further that the adjudicating authority did not rebut the same. Hence, findings of the adjudicating authority is not sustainable in this regard. As regards excess of the goods inside the factory premises the same is not liable for confiscation as offence being purely of technical nature. It is also observed that the appellant did not maintain RG1 register in the manner in which it is required to be done. Therefore, the allegation of non-maintenance of register is upheld and hence the penalty imposed in this regard is sustainable." 6. The above

findings in the order of the Commissioner are on appreciation of the facts before him. It is observed that excess quantity, of the finished goods was still within the factory premises and there is no allegation that this was intended to be removed without following the prescribed procedure or without payment of duty. The Assistant Commissioner has himself directed this quantity to be entered into the RG 1 register and thereafter to be cleared on payment of duty.

As regards the shortages, it is an admitted fact that the same related to the damaged goods lying in the factory premises of the parr}'. The Revenue in its appeal has itself pleaded that the duty on the damaged goods is liable to be remitted under the provisions of the relevant rules. The best course under the circumstances would have been to suggest to the assessee to seek the remission of duty under the relevant provisions of Central Excise law instead of rushing to confirm the duty on them. This course may be adopted now. For not maintaining the records in a proper manner, the penalty imposed on the respondents has already been upheld. In this view of the matter, there is no force in the appeal and the same is rejected.

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