

Shobhit Impex Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-29-2000

Reported in : (2000)(122)ELT545TriDel

Appellant : Shobhit Impex

Respondent : Commissioner of Central Excise

Judgement :

1. The above stay applications arise out of the order dated 29-6-2000 of the Commissioner of Central Excise, Chandigarh, vide which he has imposed a penalty of Rs. 64 lakhs on M/s. Shobhit Impex, in terms of Rule 173Q(i)(bb) and (d) of the Central Excise Rules. The penalty has been imposed for the reason that M/s. Shobhit Impex who are registered dealers in continuous cast electrolytic copper wire rods, copper scrap, brass scrap, zinc ingots, etc., issued modvatable invoices to various buyers without physically first bringing the goods into their registered godown as required under the Central Excise Rules and then issuing invoices, and in certain other cases they issued only paper invoices to certain manufacturers of metal/buyers in the State of Punjab and Haryana without actually despatching the goods covered by the invoices to them, and disposing of such goods to other buyers, thus deliberately and intentionally facilitating the buyers/manufacturers to avail inadmissible credit of duty paid on such goods. A penalty of Rs. 64 lakhs has also been imposed on Shri Om Prakash Gandhi, Manager and General Power of Attorney holder of M/s. Shobhit Impex under Rule 209A, and a penalty of Rs. 20,000/- has been imposed on Shri Sanjeev Kumar,

Clerk of M/s. Gandhi Chemfert Industries (of which Shri Om Prakash Gandhi is the Managing Partner) under Rule 209A of the Central Excise Rules.

2. We have heard Shri G.S. Bhangoo, learned Counsel and Shri Mewa Singh, learned SDR.3. We see prima facie substance in the submission of the learned Counsel that the Rules under which penalty has been imposed upon the first applicant herein are not attracted in this case. Rule 173Q(i)(bb) covers the categories of persons who take credit of duty ... in respect of inputs or capital goods for being used in the manufacture of final products or capital goods ... wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods had been paid ... or who do not utilise the inputs or capital goods as per the Rules, or utilise credit in contravention of the Rules, etc. Rule 173Q(i)(d) is applicable to those categories of persons who contravene any of the provisions of the Central Excise Rules with intent to evade payment of duty. Prima facie these two Rules are not attracted to applicant No. 1, who is a registered dealer who neither takes or utilises credit, nor evades duty liability as no duty liability is cast upon him. We also find that while the show cause notice did not specify the Sub-clause of Rule 173Q under which penalty was proposed to be imposed, the applicants submitted before the Commissioner that Rule 173Q (i)(bbb) which covers persons who enter wilfully any wrong or incorrect particulars in the invoice issued for excisable goods dealt by them with intent to facilitate the buyers to avail of credit of duty of excise in respect of such goods which is not permissible under the Rules, was not applicable during the relevant period since all the invoices issued by them were for imported goods on which the buyer/manufacturer could avail of credit of additional duty, (and not excise duty) and that it is only after the amendment of this Sub-rule w.e.f. 21-7-1999 that the Rule covered cases where wrong entries were made in invoices to facilitate buyers/manufacturers to avail inadmissible credit of additional duty. The Commissioner has also given a finding in the order that he would have agreed with the applicants' contention if the proposal to impose penalty was under that Sub-rule of Rule 173Q. In view of the prima facie case made out, we waive the pre-deposit of penalty by the applicant No. 1 and stay recovery thereof during the pendency of the appeals.

4. Pre-deposit of penalty by the other two applicants is also waived and their recovery stayed pending the appeals, in view of the fact that the show cause notice proposes penal action against them under Rule 173Q, while penalty has been imposed under Rule 209A in the adjudication order.

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