

Kellner Pharmaceuticals Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-1985

Reported in : (1985)(20)ELT80TriDel

Appellant : Kellner Pharmaceuticals Ltd.

Respondent : Collector of Central Excise

Judgement :

1.The facts giving rise to this appeal are that the appellants are engaged in the manufacture of Patent and Proprietary Medicines falling under T.I. No. 14-E of the Central Excise Tariff Schedule of the Central Excises and Salt Act, 1944 and were availing the benefit of Notification No. 71/78, dated 1-3-1978. On 20-9-1979 the Preventive Officers of Central Excise, Kanpur visited the factory of the appellants and found that the exemption of first clearances worth Rs. 5 lakhs under Notification No. 71/78 dated 1-3-1978 had been crossed by the appellants on 14-9-1979 during the current financial year. After availing Rs. 4 lakhs worth exemption, the appellants had furnished a declaration to the Central Excise department and had also applied for issue of Central Excise licence. The clearances between Rs. 4 lakhs and Rs. 5 lakhs were effected on Central Excise gate passes besides factory's own challans and invoices but no records were maintained by them in respect of P and P medicines produced and cleared during the period. L-4 Licence was issued to the appellants on 22-8-1979.

2. The officers found that P and P medicines worth Rs. 1,94,014.29 were lying packed in the factory's store room and those were ready for delivery but without

accountal in the statutory R.G. 1 records. Those were seized for violation of the Central Excise Rules.

3. The officers also found one delivery van No. USF-4833 parked inside the factory gate of the appellants and the said van was loaded with P and P medicines worth Rs. 4315.20. Since the appellants had not issued any Central Excise gate pass covering the transport of the P and P medicines, the goods and the van were seized for violation of the Central Excise Rules. On scrutiny of the records, it was further observed that the appellants had cleared P and P medicines worth Rs. 1,50,584.00 during the period from 14-9-1979 to 20-9-1979, over and above the exempted clearance of Rs. 5 lakhs. Out of these medicines, medicines worth Rs. 1,36,049.80 were seized from different premises including the godown of Spencer and Co. Kanpur, their transporters (namely Delhi Gorkhpur Transport Society) and the godowns of Spencer and Company at Madras, Patna and Calcutta.

4. On the basis of these lapses on the part of the appellants, show cause notice was issued to the appellants on 11-1-1980 asking them to show cause as to why penalty should not be imposed on them under Rules 9(2), 52-A, 226 and 173-Q of the Central Excise Rules, 1944, and why the P and P medicines valued at Rs. 1,94,014.29 seized in the factory's store room and P and P medicines worth Rs. 1,36,049.80 seized at different places in respect of which the offence appears to have been committed should not be confiscated under Rules 9(2), 52-A, 226 and 173-Q of the Central Excise Rules, 1944 and why duty on the P and P medicines valued at Rs. 1,50,584/- cleared by them from 14-9-1979 to 20-9-1979 without payment of duty in a manner as provided under the Central Excise Rules should not be demanded under Rule 9(2) of the Central Excise Rules, 1944.

5. The appellants in their reply dated 4-2-1980 admitted the lapses on their part but stated that they had no mala fide intention to evade Central Excise duty. They attributed the lapses due to ignorance of the Central Excise Rules and Procedure by their Plant Manager and requested for lenient view to be taken for the unintentional mistake committed by the Plant Manager, They stated that they had taken steps to deposit Rs. 27,000/-on 13-9-1979,15-9-79 and 17-9-1979 towards payment of duty of these goods and from this act it is clear that they had no

intention of evading payment of duty. They were, however, ready to pay the balance of Central Excise duty on these goods, if any.

6. The Collector of Central Excise, Kanpur, by his Order-in-Original No. 21/Collec/MP/80 dated 30-5-1980 confiscated the patent and proprietary medicines valued at Rs. 1,94,014.29 seized from the factory of the appellants under Rules 9(2), 52-A, 226 and 173Q of the Central Excise Rules, 1944, but allowed clearance of the same on payment of fine of Rs. 20,000/- on the ground that the party had deposited duty amount totalling Rs. 27,000/- and there was no intention to evade payment of duty. He also ordered the confiscation of P and P medicines worth Rs. 1,36,049.80 seized from the van and from various godowns-cum-distribution centres at Kanpur, Madras, Patna and Calcutta under Rules 9(2), 52-A, 226 and 173-Q of the Central Excise Rules, 1944 but allowed their redemption on payment of redemption fine of Rs. 15,000/- on the same ground that the appellants had no intention to evade payment of duty. An order demanding duty of excise under Rule 9(2) on P and P medicines valued at Rs. 1,50,584 cleared by the appellants during the period 14-9-1979 to 20-9-1979 was also passed.

Besides this, the Collector also imposed a penalty of Rs. 5,000 on the appellants under Rules 9(2), 52-A, 226 and 173Q of the Central Excise Rules, 1944. The delivery van was also ordered to be confiscated under Section 115(2) of the Customs Act, 1962 but was allowed to be redeemed on payment of Rs. 6,500/- as redemption fine.

7. On appeal before the Central Board of Excise and Customs, New Delhi, Shri Venkataraman, Member Central Board of Excise and Customs, by his Order No. 199-B of 81 dated 27-3-1981 reduced the fine in lieu of the confiscation of the goods valued at Rs. 1,94,014.29 seized from the factory's store room to Rs. 1,000/-, the fine in lieu of the confiscation of the goods valued at Rs. 4,315.20 seized from the van and goods valued at Rs. 1,36,049.80 from the premises outside the factory was also reduced to Rs. 10,000/-. The order of the confiscation of the van was set aside and the penalty of Rs. 5,000/- was sustained.

8. Not satisfied with this order passed by the Central Board of Customs and Excise, New Delhi, the appellants filed a revision application before the Government of India, Ministry of Finance, Department of Revenue, New Delhi under Section 36 of the Central Excises and Salt Act, 1944 which now stands transferred to this Tribunal to be heard as an appeal under Section 35P of the Central Excises and Salt Act, 1944.

9. We have heard Shri N.N. Srinivasan, Consultant for the appellants and Shri S.N. Khanna, J.D.R., for the department and gone through the record.

10. Shri Srinivasan, the learned consultant of the appellants submitted that no doubt there has been an inadvertent technical lapse on the part of the appellants by not completing the R.G. 1 Register and P.L.A.Account and not issuing the gate passes but there was no intention on the part of the appellants to evade payment of duty. According to Shri Srinivasan, admittedly, a sum of Rs. 27, 000/- was deposited in the Treasury in their PLA account on 14-9-79, 15-9-79 and 17-9-79 but for want of knowledge the PLA account could not be debited and it is only a technical irregularity and that is why the Collector as well as the Board held that there was no intention on the part of the appellants to evade payment of duty since advance duty for Rs. 27,000/- was lying credited in their PLA account. According to the learned consultant, when there is no mala fide intention to evade payment of duty, provisions of Rule 9(1) will not be attracted and penal consequences as envisaged under Rule 9(2) read with Rules 173-Q are also not attracted.

According to Shri Srinivasan, the penalty of Rs. 5,000/-imposed upon the appellants cannot be said to be valid and justified. He drew our attention towards a decision of the Hon'ble Supreme Court in the case of Hindustan Steel Mills Ltd. v. State of Orissa (AIR 1970 S.C. 263) in support of his contention that the liability to pay penalty does not merely arise upon the proof of the default. The order imposing penalty for failure to carry out statutory obligation is the result of quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged or acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

11. According to the learned consultant, as the authorities below have held that there was no intention to evade duty so the penal provisions of Rules 9(2) and 173-Q should not be invoked in imposing personal penalty of Rs. 5,000/-.

12. Regarding the imposition of redemption fine amounting to Rs. 10,000/- the learned consultant submitted that it is very excessive and harsh for the first offence. He pointed out that the aggregate duty involved is only Rs. 18,856.26 against the credit balance of Rs. 27,000/- in the PLA account. There has not been any intention to clear the goods without payment of duty. Had our intention been to evade duty the sum of Rs. 27,000/- as duty amount would not have been deposited by us in our PLA account, Shri Srinivasan added. According to him, this penalty of Rs. 10,000/- is excessive and disproportionate to the duty amount involved. Regarding redemption fine of Rs. 1,000/-, he did not submit any argument.

13. Shri Khanna, the departmental representative countered the arguments of Shri Srinivasan and submitted that mere deposit of duty amount in the Treasury in the PLA account of the appellants does not satisfy the requirements of the law. Unless and until their PLA account is debited to the extent of duty amount on the goods cleared against gate passes, that amount though deposited in the Treasury would remain credited in the PLA account of the party. By not debiting the PLA account to the extent of the duty amount of the goods cleared, the appellants have made them liable to the penalty which has been correctly imposed by the authority below. Besides this, Shri Khanna argued, admittedly, the appellants violated the various provisions of the Central Excise Rules inasmuch as the R.G. 1 Register was not filled in, the PLA account was not debited and the goods were not cleared against the gate passes. Had there been no checking by the preventive staff of the excise, there would not have been any detection of the non-payment of the excise duty. Shri Khanna submitted what more is required for imposing penalty and redemption fine in such cases. The appellants had removed goods for more than Rs. 3 lakhs involving a substantial amount of duty and therefore, the penalty amount of Rs. 5,000/- and the redemption fine of Rs. 10,000/- cannot be said to be excessive and disproportionate.

14. It is admitted case of the parties that the appellants had crossed exemption limit of Rs. 5 lakhs under Notification No. 71/78 dated 1-3-1978 on 14-9-1979 and they were not maintaining any records of production or clearance of the goods i.e. patent and proprietary medicines manufactured by them. It is also not disputed that though they had deposited Rs. 27,000/- in the Govt. Treasury on 14-9-1979, 15-9-1,979 and 17-9-1979 to be credited in their PLA account but actually their PLA account was not debited to the extent of excise duty of the goods cleared by them from 14-9-1979. No doubt it is true that by not entering the manufactured goods in the R.G. 1 register, they violated the provisions of Rule 226 of the Central Excise Rules, 1944, by clearing the goods without issue of gate passes they violated the provisions of Rule 52-A of the Central Excise Rules and by clearing the goods without making a debit entry in their PLA account they had also violated the provisions of Central Excise Rules, but the question arises whether the imposition of penalty of Rs. 5,000/- can be said to be justified when the authorities below themselves feel that there was no intention to evade payment of duty on the part of the appellants.

15. Proceedings under Rule 173-Q are of quasi-criminal in nature.

Department should exercise penal power with great caution. As has been laid down by the Hon'ble Supreme Court in the case of Hindustan Steel Mills Ltd. v. State of Orissa, the liability to pay penalty does not merely arise upon the proof of default. The order imposing penalty for failure to carry out statutory obligation is the result of quasi-criminal proceedings. Penalty will not ordinarily be imposed unless the party obliged or acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of authorities to be exercised judicially and on consideration of all the relevant circumstances.

16. The legal proposition as laid down by the Hon'ble Supreme Court coupled with the facts that a sum of Rs. 27,000/- which amount was more than the duty amount, was available in the PLA account of the appellants during the relevant period and the authority below had found that there was no intention on the part of the

appellants to evade payment of duty clearly indicate that imposition of penalty of Rs. 5,000/- cannot be said to be justified. It is not a case which deserves imposition of personal penalty and we hold it so.

17. Regarding the fine of Rs. 10,000/- in lieu of confiscation of the goods, we feel that it is excessive in the circumstances of the present case, particularly when the Excise authorities do not impute any mala fide intention on the part of the appellants. It is a case of lapses on the part of the appellants and so, we are of the view that ends of justice would be met if we reduce the fine in lieu of confiscation to Rs. 2,000/-. We, therefore, reduce this redemption fine to Rs. 2,000/- only.

18. Having regard to all the circumstances and our findings above, we partly accept the appeal and order as under :- (i) The fine in lieu of confiscation of the goods valued at Rs. 1,94,014.29 seized from the factory store room shall remain as Rs. 1,000/- (Rupees one thousand only).

(ii) The fine in lieu of confiscation of the goods valued at Rs. 4,315.20 seized from the van and of goods valued at Rs. 1,36,049.80 from the premises outside the factory shall stand reduced from Rs. 10,000/- to Rs. 2,000/- (Rupees two thousand only).

19. The excise authorities shall determine the correct assessable value of the goods for the purposes of excise duty as directed in the impugned order passed by the Central Board of Excise & Customs, New Delhi.

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