Dinesh Greases Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-31-2001

Reported in : (2001)(134)ELT515Tri(Chennai)

Appellant : Dinesh Greases

Respondent : Commissioner of Central Excise

Judgement :

1. Both these appeals arise from same Order-in-Original No. 16/97, dated 14-3-1997 passed by the Commissioner of Central Excise, Madurai on the ground that the order of Commissioner is erroneous and unsustainable in law inasmuch as he has failed to consider various submissions, grounds and evidence before adjudicating the matter and the order is therefore vitiated. Appellants have been issued a fresh certificate with a fresh number for the factory located at No. 1-B, Avaniapuram Road, Thirupparankundram, under the Factories Act, 1948.

They have also submitted that they are a small scale unit and they have given the full ground plan and they have given the information in the prescribed format. It is submitted by the appellants that the Superintendent of the range should have known the details of the earlier manufacturer, if any, which they are not supposed to disclose to the Department suo moto until they were asked. The Department had neither asked nor they were forced to intimate about the earlier manufacturer which the Superintendent has failed to notice and has failed to discharge his duty for which they cannot be penalised.

Appellants had no intention to evade any payment of duty and all the operations have been done only in a bona fide manner. They have also submitted that there is no finding against the appellant Shri S. Rajan, Managing Partner who has been imposed a penalty without giving any finding against him and without coming to the conclusion that there was any nexus involving him directly for the alleged violation. Therefore, the penalty which has been imposed on Shri S. Rajan, Managing Partner is also liable to be set aside. They have, therefore, submitted that since they had no mala fide and also no intention to evade duty, the extended period cannot be invoked and therefore the Order-in-Original No. 16/97, dated 14-3-1997 passed by C.C.E., Madurai may be set aside, with consequential relief.

2. Heard ld. Advocate, Shri M.V. Raman for the appellants who reiterated the grounds of appeal as above.

3. Ld. DR Shri A. Jayachandran submits that under the liberalisation and the SRP Scheme lot of trust has been put on the appellants to disclose all the information and it was therefore incumbent upon them to have intimated all the particulars about the earlier manufacturer who had utilized the same premises and therefore the extended period has been rightly invoked by the Commissioner.

4. We have carefully considered the submissions made by both the parties and in para 20, the Commissioner has recorded the finding that approval of ground plan by the Superintendent of Central Excise does not change the position that they were required to intimate that their factory was being utilised by M/s. Dinesh Greases for the manufacture of lubricating grease and they should have intimated about the manufacturing activities of M/s. Ravi Lubrication who had preceded them. We do not find this finding of ld. Commissioner as legal and proper inasmuch as the Superintendent of Central Excise had jurisdiction and control over this factory and when he had visited, he was duty bound to have asked all the details before approving the ground plan, and in case, he had asked any information and if that information had been held by them, then they can be held liable for any violation of suppression and not otherwise. In this connection, this Tribunal's decision in the case of Asoka Wafers v. C.C.E., Hyderabad reported in 1994 (74) E.L.T. 725 (T) is placed before us to support the plea of the appellants

and the findings recorded in para 6 on the aspect of suppression is relevant and applicable to the facts of this case. The Tribunal observed that there were two sister units, one manufacturing wafer with the brand name "ASOKA" and the other manufacturing biscuits with the same brand name situated adjacent to each other under the jurisdiction of same range Superintendent and the Asst. Commissiqner. The Tribunal observed that the authorities are presumed to be aware of use of common brand name by the two units without not taking any action being not declared whether wafer and biscuit were same commodity and hence alleged suppression not correct as there is no suppression and demands beyond the six months were held as barred by time. We also notice that the facts of the present case are in a better position inasmuch as it was the same factory where the goods were being manufactured by the earlier li-cencee and by the appellants, which the Superintendent-in-charge should have known and with little diligence could have found this information. We, therefore, find that the order of the Commissioner of Central Excise, Madurai confirming the short levy of Rs. 1,60,678/- by invoking extended period under Sub-section (1) of Section 11AF Central Excise Act, 1944 is not sustainable and the order-in-original imposing penalty of Rs. 16,000/- on M/s. Dinesh Greases under Rule 173Q and Rs. 10,000/- on Shri S.Rajan, Managing Partner of Dinesh Greases under Rule 209A of C.E.Rules, ibid., is also not sustainable. In view of the above facts and circumstances, the appeals are allowed with consequential relief, if any, as per law. Ordered accordingly.