Automatic Instruments (P) Ltd. Vs. Commissioner of C. Ex., Delhi

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-21-2002

Reported in : (2002)(141)ELT782TriDel

Judge : K Bhatia

Appellant : Automatic Instruments (P) Ltd.

Respondent : Commissioner of C. Ex., Delhi

Judgement :

1. The appellants manufacture Heating Thermostats and Electrical Domestic Appliances falling under sub-heading No. 9032.12 and No. 8509.

On 4-5-98, the Central Excise Officers, Delhi visited the factory premises of the appellants. On physical verification of the finished goods in the presence of Shri Subhash Narang, Director of the appellants, 130 juicer mixer grinders valued at Rs. 1,39,750/- involving Central Excise duty of Rs. 25,155/- were found short as against the entry made in RG-1 register. On further verification, it was also found that they had also cleared 4800 pieces of heating thermostats valued at Rs. 1,86,440/- involving Central Excise duty of Rs. 20,002.32 under invoice Nos. 45 to 48, dated 4-5-98 but the duty was not debited in PLA. There was also no entry in the RG-1 register.

Accordingly, the Officers found the shortage of the goods valued at Rs. 3,26,119/- involving Central Excise duty of Rs. 45,157.32. Shri Subhash Narang, Director of the party in his statement recorded of even dated admitted the shortage and voluntarily debited the Central Excise duty of Rs. 45,157.32 in their PLA. Consequently, the proceedings were initiated against the appellants which culminated in the Deputy Commissioner of Central Excise, New Delhi passing an order dated 14-1-99 in which he confirmed the duty of aforesaid amount under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11A. He further imposed a penalty of Rs. 50,000/- under Rule 173Q.2. The party filed an appeal. The Commissioner (Appeals), New Delhi, vide his order dt. 30-4-2001 but for reducing the penalty to Rs. 25,000/-, otherwise rejected the appeal of the party. This is the second stage appeal against the impugned order of the Commissioner (Appeals), New Delhi dated 30-4-2001. I have heard Shri V.K. Gupta, ld.Advocate for the appellants and Shri R.C. Sankhla, ld. JDR for the Revenue.

3. I have considered these submissions made before me. The ld. Counsel for the appellants does not dispute the facts of the case. He, however, contends that there was sufficient balance in their PLA account in respect of the duty liability on the goods which were found short, He further contends that the appellants immediately debited the amount of the duty in their PLA on being pointed the discrepancies. On this score, it is contended that no penalty is liable to be imposed on the party in this regard. He has placed reliance on the decision of CEGAT in Stellar Chemical Laboratories (P) Limited v. CCE, Vadodara - 2001 (134) E.L.T. 504 (T) = 2001 (46) RLT 727 (T). It is observed that the shortage found in respect of the finished goods as against the entry made in RG-1 register of the appellants on stock verification by the Central Excise Officers is not contested. The duty liability on the goods found short is also not in dispute but in fact the same is already debited by the party in their PLA. I find no force in the contention that once the due duty is paid, no penalty is liable to be imposed. There is no such provisions of law cited before me. The reliance placed on the decision of the Tribunal in Stellar Chemical Laboratories (P) Limited cited (supra) is also misplaced. In that case - the Tribunal observed in the decision that the Commissioner (Appeals) had even observed that the assessee had any mala fide intention. The facts are not similar in the present case. In my view, the penalty of Rs. 25,000/- upheld in the impugned order, in the facts and circumstances of the case, is not very high. Consequently, the appeal fails and the same is accordingly

dismissed.