

Cce Vs. P.C. Laboratories Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Feb-12-2002

Reported in : (2002)(82)ECC404

Judge : A Wadhwa

Appellant : Cce

Respondent : P.C. Laboratories Pvt. Ltd.

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals) the Revenue has preferred the present appeal. Nobody has appeared on behalf of the respondents. Accordingly I have heard Shri A.K. Pandit, Id. JDR for the Revenue.
2. The appellants' factory was visited by the Central Excise officers and it was found that their RG-1 register was not written for the last 6-7 days prior to the visit of the officers. Accordingly the officers seized the excess found goods worth Rs. 1,51,380.90 (rupees one lac fifty one thousand three hundred eighty & ninty paisa) involving central excise duty of Rs 22,707,13 (rupees twenty two thousand seven hundred and seven and thirteen paisa).
3. Based upon the above evidence proceedings were initiated against the respondents The Asst. Commissioner, Patna vide his order-in-original concluded that the goods were kept unaccounted to suppress the actual quantity of production, which should also have a bearing on the full exemption limit of

clearance value up to rupees thirty lakhs.

Accordingly he held that the goods were liable for confiscation.

However, he gave an option to the respondent to redeem the same on payment of redemption fine of Rs. 35,000 (rupees thirty five thousand) only. He also imposed a personal penalty of Rs. 5,000 (rupees five thousand).

4. On an appeal against the above order Commissioner(Appeals) observed that admittedly the goods were not entered in the Central Excise records. However, he observed that there is nothing in the present matter to show that there was an attempt on the part of the appellant (respondent herein) to remove the goods clandestinely inasmuch as the goods were lying in the factory. Accordingly by following the various earlier decisions of the Tribunal, he held that the confiscation and imposition of fine was not sustainable. He also observed that the respondent are availing exemption under Notfn. No. 1/93 and as such some leniency is called for in imposition of penalty. He accordingly reduced the penalty to Rs. 2,000 (rupees two thousand).

5. The Revenue in their memo of appeal have contended that the respondents have not denied the non-maintenance of RG-1 records. As such the final excisable goods not entered in RG-1 records are liable to confiscation as per the provisions of Rule173Q(1)(b).

6. The plea taken by the respondent before the authorities below as regards non-maintenance of RG-1 record is that their clerk, who maintains excise records was on leave for six days prior to the date of visit of the officers on 16.6.95. However, it is seen that the said fact of the clerk being on leave was not brought to the notice of the Central Excise officers at in point of time prior to the visit nor any permission taken by the said respondent from the department for non-maintaining the record during this intervening period. Rules require the assesseees to maintain the records on daily basis and to enter the day's production in daily stock account unless allowed otherwise. It is not the appellants' contention that there was any such permission/granted to them by the Revenue. Rule 173Q specifically provides confiscation of the goods if the same are not entered in RG-1.

Commissioner (Appeals) has accepted the respondents' contention and has set aside the confiscation by observing that there was no attempt on the part of the respondents to remove the goods clandestinely. Even if the above observation made by the Commissioner (Appeals) is accepted and it is held that there was no attempt to suppress the production or to remove the goods clandestinely, still the goods are liable to confiscation for the simple reason of their non-entry in RG-1 records, in terms of the provisions of Rule 173Q(1)(b).

7. I also find that the Tribunal in the case of CCE, Delhi v. Universal Auto Products Ltd. has considered the earlier decisions of the Tribunal, which have also been relied upon by the Commissioner (Appeals) in the impugned order. It was observed that in almost all the decisions it was the assessee's contention that the goods had not reached RG-1 stage and it was in those circumstances, their confiscation was set aside. In the present case, there is no plea of the respondent that the goods were not fully ripe for their entry in RG-1. As such by following the ratio of the decision in the case of Universal Auto Products referred (supra) I am of the view that the goods are liable to confiscation for the simple reason of their non-entry in daily stock register for the six days. Accordingly I uphold the confiscation of the seized goods. However, quantum of redemption final is reduced from Rs. 35,000 (rupees thirty five thousand) to Rs. 20,000 (rupees twenty thousand). The quantum of penalty has already been reduced by Commissioner (Appeals) from Rs. 5,000 (rupees five thousand) to Rs. 2,000 (rupees two thousand). I find no justification in interfering in the said quantum.

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