Dhebar Steel Re-rollers Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/27708

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-27-2002

Reported in : (2002)(142)ELT194TriDel

Judge : S Kang

Appellant : Dhebar Steel Re-rollers

Respondent : Commissioner of Central Excise,

Judgement :
1. Appellants filed this appeal against the adjudication order passed by the Commissioner (Appeals).

2. Brief facts of the case are that on 25-4-96, the officers of the Revenue Department intercepted a truck loaded with 12.605 MT of C.T.D.Bars. The driver of the truck could not produce any duty paying documents, in his statement he submitted that C.T.D. bars were loaded by him from the factory permise of M/s. Dhebar Steel Re-Rollers for further delivery to M/s. Shiva Dhaneli. The goods were taken into possession and, thereafter, the factory permise of the appellant was searched. On verification, it was found that there was a shortage of 20.00 MT of Waste & Scrap and, there was excess of 26.998 MT of Ribbed Bars and 26.00 MT of Angles and Channels and excess of 31.505 MT of raw-material. The adjudicating authority confiscated the goods which was found in excess and gave option to redeem the goods on payment of redemption fine and demanded duty in respect of goods found short. The penalty of Rs. 50,000/- was imposed on M/s.

Dhebar Steel Re-Rolling Mills and penalty of Rs. 25,000/- on Shri Mohd. Akhtar, partne of the Appellant Firm. The Mandatory penalty under Section 11AC of the Cen tral Excise Act was also imposed.

3. The contention of the appellant is in respect of the goods found in the truck is that the goods were sent for weighment and the duty paying documents were to be prepared after getting the actual weighment of the goods.

4. In respect of shortage and excesses found in the factory, the contention of the appellant is that shortage and excesses were calculated on estimate basis and no actual weighment was done. For this, he relies upon the decision of the Tribunal in the case of K.L.

Steels Ltd. v. Commissioner, reported in 1998 (100) E.L.T. 406 (Tribunal) to submit that the demand is not sustainable where the shortage and excesses were made only on estimate basis.

6. The contention of the appellant is that the goods in the truck were sent for weighment. The chit which was produced by the driver of the truck at the time of interception shows the actual weight of the goods in question. In these circumstances, I find no force in the arguments of the appellant that the goods were sent for weighment. Therefore, the order of confiscation in respect of the goods found in the truck is upheld. However, taking into facts and circumstance of the case, the redemption fine is reduced to Rs. 10,000/-(Rupees ten thousand only).

7. The contention of the appellant in respect of the shortage and excesses found in the factory and in respect of the weighment of final product and the raw material is that that it was done on estimate basis and no actual weighment was done. The adjudicating authority in the impugned order rejected this plea only on the ground that at the time of visit, Panchanama was drawn in which the appellant had not made any objection in respect of weighment. The Revenue had not produced any evidence to show that the shortages and excesses were based on actual weighment of the inputs and final products. Therefore, the order of confiscation in respect of the goods found excess in the factory and demand of duty in respect of

the goods found short is not sustainable, hence set aside.

8. As discussed above, the confiscation in respect of the goods found in the truck is upheld. Therefore, the appellants are liable to pay the penalty of Rs. 2,000/- (Rupees two thousand only). Taking in view of the facts and circumstances of the case the personal penalty imposed on the partner of the firm is set aside. The appeal is disposed of as indicated above.