Kalinga Cable Co. and anr. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-12-2002

Reported in : (2002)(104)LC119Tri(Delhi)

Judge : S T G.R., P Bajaj

Appellant : Kalinga Cable Co. and anr.

Respondent : Cce

Judgement :

1. These are two appeals filed by Shri Lokesh Jain & Kalinga Cable Co.

the appellants against imposition of penalty of Rs. 1,50,000/-.

2. The appellant is engaged in the manufacture of copper wires and cables classifiable under Chapter heading 85.44. The appellants procured copper wire for manufacture of coils and cables. They purchased consignment of copper wire finer than 6 mm from M/s. Amit Metal under their invoice No. 57 dt. 21.10.1999.

3. Search was conducted in the factory premises of M/s. Amit Metal. It resulted into recovery of some private record. Shri Devi Ram was asked to explain the entries in the private records. In his statement Shri Devi Ram on the basis of those entries stated that some goods had been sold to M/s. Kalinga Cables.

4. Statement of Shri Rajeev Seth of M/s. Kalinga Cables Co. was also recorded. He denied having receipt of any copper wire from M/s. Amit Metal. A SCN was

issued to the appellants asking them to explain as to why penalty should not be imposed on them. In reply to the SCN, the appellants submitted that they were not in any way connected with the goods. It was submitted by them that Shri Devi Ram had indicated sale of goods to one Kalinga Wires whereas their factory was not Kalinga Wires but was Kalinga Cables Co. It was also submitted by them that they had purchased some goods from Amit Metal under a bona fide invoice. It was, therefore, argued that the appellant was in no way connected with any copper wire sales from M/s. Amit Metal except the one under the regular invocie of M/s. Amit Metal.

5. Alter careful consideration of the submissions made Ld. Commissioner imposed the penalty of Rs. 1.5 lakh on the appellant.

6. Shri Naveen Mullick, Ld. Counsel submits that the Department has not been able to make out any case against the appellant. He submits that in his statement Shri Devi Ram only named Kalinga Wires. He submits that their firm was not Kalinga Wires but was Kalinga Cables. Ld.

Counsel submits that Shri Rajeev Sethi of Kalinga Tubes denied any purchase of copper wires from Amit Metal except one consignment for which regular voucher was issued. Ld. Counsel, therefore, submitted that the applicant was in no way concerned with the goods nor had the knowledge that the goods were liable to confiscation. He, therefore, submitted that there is no case for imposition of penalty under Rule 209A of Central Excise Rules, 44. He, thefore, prays that appeals may be allowed.

8. We have heard the rival submissions. We note that Shri Devi Ram had indicated the name of the firm as Kalinga Wires. However, we note that there was no mention of Kalinga Cables. We further note that there was only one sale to M/s. Kalinga Cables by M/s. Amit Metal. No other evidence has been brought on record to indicate the role of the appellant in the present case. In the absence of any evidence, we hold that no case is made out for imposition of penalty on the appellants under Rule 209A of Central Excise Rules. Accordingly, the appeals are allowed. Consequential relief, if any, shall be admissible to the appellants in accordance with law.