

Commissioner of Central Excise, Vs. Unique Malt (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-22-2002

Reported in : (2002)(83)ECC561

Judge : P Chacko

Appellant : Commissioner of Central Excise,

Respondent : Unique Malt (P) Ltd.

Judgement :

1. The brief facts of this case are as under :- The respondents, manufacturers of Barley Malt etc. had not filed the pre-budget declaration required under Rule 223B(1) of the Central Excise Rules, 1944, on 28-2-2000. However, their stock of final products on that day tallied with the recorded balance in RG-1. The department, by show-cause notice, proposed to confiscate the stock and impose penalty on the manufacturer under Rule 223B(2). No reply was given to the notice, nor did the manufacturer appear before the adjudicating authority in spite of notice of hearing. The adjudicating authority, therefore, confiscated the goods, totally valued at Rs. 1,73,440/-, with an option for redemption thereof on payment of a fine of Rs. 30,000/-. That authority also imposed a penalty of Rs. 2,000/- on the manufacturer under Rule 223B. In the appeal preferred by the manufacturer against the order of the Asstt. Commissioner, the party did not contest the penalty but challenged the confiscation and redemption fine on the ground that non-filing of pre-budget declaration was only a minor technical lapse. The lower appellate authority accepted their plea and held that, in view of the fact that the stock of final

products had been duly entered in the RG-1, there was no warrant for confiscation of the goods on the ground of non-filing of pre-budget declaration. That authority accordingly set aside the confiscation/redemption fine while affirming the penalty. The Revenue has come in appeal against the decision of the Commissioner (Appeals) in relation to confiscation/redemption fine.

It is not in dispute that every registered manufacturer of excisable goods was statutorily obliged to file a declaration in terms of Sub-rule (1) of Rule 223B on the day preceding the Parliament's Budget Day. The respondents admittedly did not file any such declaration on 28-2-2000, the day preceding the Budget Day. The Managing Director of the respondent-company, whose statement was recorded by officers of Central Excise, stated that there was no production activity in their factory on 28-2-2000 and the staff concerned was not available in the factory on that day, that he himself was busy on that day and hence could not attend to the factory affairs and that he was not aware of the rule pertaining to pre-budget declaration. The show cause notice issued by the department proposing to confiscate the stock of excisable goods and impose penalty on the respondents under Sub-rule (2) of Rule 223B was not contested by them. The party also did not respond to the notice of hearing issued by the adjudicating authority. The said authority, therefore, passed an ex parte order against the respondents confiscating the stock of excisable goods (with option for redemption on payment of Rs. 30,000/-) and imposing a penalty of Rs. 2,000/- on the party under Sub-rule (2) of Rule 223B. The order of the Asstt.

Commissioner was challenged before the Commissioner (Appeals). In that appeal, however, the party did not press their challenge vis-a-vis the penalty imposed under Rule 223B(2). The contest was only against the confiscation and redemption fine. That contest succeeded. Hence the Revenue's appeal.

3. Reiterating the grounds of the appeal, Id. JDR submits that the requirement of filing of pre-budget declaration under Sub-rule (1) of Rule 223B is mandatory and hence not relaxable. He submits that this requirement of law was stressed by the same Commissionerate in its Trade Notice No. 7/2000 issued to the Trade and Industry including the respondents. Therefore, the DR submits, the respondents

cannot plead ignorance of the requirement of filing pre-budget declaration. Sub-rule (2) of Rule 223B prescribed the penal measures of confiscation and penalty for the offence of non-filing of pre-budget declaration. The order of the Commissioner (Appeals) setting aside the confiscation/redemption fine is not legally correct, DR submits.

4. Opposing the DR's argument, Id. Advocate for the respondents submits that non-filing of pre-budget declaration was only a condonable minor technical lapse and, therefore, no confiscation of the goods was warranted, particularly in view of the fact that the stock of the goods fully tallied with the RG-1 balance. Ld. Counsel relies on the decision of this Tribunal in Tufail Ahmed v. CCE [1992 (62) E.L.T. 745], wherein non-filing of declaration for exemption from licensing control was held to be a mere technical breach of Notification No. 11/88-CE. (N.T.). Ld.

Counsel submits that, in the cited case, confiscation of excisable goods and imposition of penalty were set aside by this Tribunal.

Under Sub-rule (1) of Rule 223B, a registered manufacturer of excisable goods has to file a declaration of the stock of such goods, furnishing particulars of the last gate pass/invoice issued up to 6 P.M. on the pre-budget day. Under Sub-rule (2), any such manufacturer, who fails to file the declaration in the manner prescribed under Sub-rule (1) is liable to penal action and all the excisable goods in respect of which declaration has not been made are liable to confiscation. In the instant case, the respondents admittedly did not file the required pre-budget declaration of the stock of excisable goods. Before the adjudicating authority, they did not contest the department's proposal for confiscation of the goods and imposition of penalty. Before the lower appellate authority, the party did not press their challenge against imposition of penalty, but urged that the confiscation and redemption fine be set aside on the ground that the stock of excisable goods had tallied with their RG-1 balance on 28-2-2000. The Commissioner (Appeals) accepted their plea and vacated the confiscation/redemption fine, while upholding the penalty. A close perusal of Sub-rule (2) of Rule 223B shows that, for an order of confiscation of the stock of excisable goods undeclared under Sub-rule (1) on the pre-budget day, non-filing of declaration in the manner prescribed under Sub-rule (1) is sufficient

ground. Even if a declaration is filed, if it is not in the prescribed manner, the excisable goods so declared can be confiscated under Sub-rule (2). The present case is not merely one of "non-filing of declaration in the manner prescribed" but a case of non-filing altogether, which, in my view, is not a minor technical lapse that can be condoned. It is also pertinent to note that the respondents have accepted the penalty which is one part of the penal measure prescribed under Sub-rule (2) of Rule 223B.6. I find that penalty and confiscation go hand-in-hand under Sub-rule (2). Once the penalty is accepted, there is no escape from confiscation. That the stock of goods had tallied with RG-1 balance as on 28-2-2000 is immaterial for purposes of Sub-rule (2). The respondents, in the investigative stage of the case, pleaded ignorance of the Rule. This plea is neither tenable in law nor plausible in view of the Trade Notice issued by the jurisdictional Commissioner to all the manufacturers including the respondents advising due compliance with Sub-rule (1) of Rule 223B, 7. In view of the findings recorded above, I hold that the order of the Commissioner (Appeals) setting aside the confiscation of the goods is erroneous. However, in the fact and circumstances of the case, interference in the quantum of redemption fine imposed by the original authority is called for. In the result, the confiscation ordered by the original authority is sustained, but the redemption fine imposed by that authority is reduced to Rs. 10,000/-. The penalty shall stand as such. The impugned order is set aside and the appeal is allowed to the above extent.

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