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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-29-2002

Reported in : (2003)(161)ELT1175TriDel

Judge : S T G.R., P Bajaj

Appellant : Rotoflex Industries

Respondent : Commissioner of C. Ex.

Judgement :

1. These two appeals arise out of the same impugned order, therefore, they are being disposed of by a common order, 2. The facts of the case briefly stated are that the appellants are manufacturer of co-extruded multilayer films and flexible packing materials. The appellant-company was using plastic granule as input for the manufacture of their final product. Appellant was procuring duty paid plastic granule and was taking Modvat credit of duty paid on the input. The appellant removed 1,78,500 kgs. of plastic granules. They however did not reverse Modvat credit of Rs. 18,57,262/- taken as Modvat credit on the granules. The appellant reversed the entire amount on 19-2-1996 in the register RG-23A part II. A show cause notice was issued to the appellants proposing to confirm the amount of credit reversed and also proposing to impose penalty. The Additional Commissioner of C. Ex. ordered reversal of Modvat credit of Rs. 18,57,262/- and also imposed a penalty of Rs. 5.0 lacs. When the appellant filed an appeal the learned Commissioner (Appeals) confirmed the reversal and imposed a penalty equal to duty on the company and Rs. 5.0 lacs on the Managing Director of the

company.

3. Arguing the case for the appellants Shri Jitendra Singh, learned Counsel submits that the appellants had no intention to evade payment of duty. He submits that it was a clerical error of the employee who was maintaining the central excise records. He submits that as soon as the mistake was pointed out the appellant reversed the entire amount of Modvat credit taken on the inputs. Learned Counsel submits that in view of the facts of the case penalty amounting to Rs. 18,57,262/- was too harsh and therefore may be waived.

4. In regard to imposition of penalty on the Managing Director of the company, learned Counsel submits that the Managing Director was not in India. He was abroad and since he had no role whatsoever in clearance of the goods without payment of duty the imposition of penalty on the Managing Director was not warranted.

5. Shri Mewa Singh, learned SDR, submits that it is a clear case of removal of inputs without payment of duty. He submits that the order reversing Modvat credit was sustainabie in law. Learned SDR submits that it would be seen that the amount of duty was quite substantial, therefore, the quantum of penalty was not too high on the company.

Learned SDR also submits that Managing Director is answerable to the company as he would be looking after clay to day working in company and cannot absolve himself of the responsibility. He, therefore, submits that penalty has rightly been imposed on the Managing Director.

6. On careful consideration of the submissions made before us by both the sides we note that goods in this case that is plastic granules were cleared without payment of duty. In the instant case Modvat credit was taken on receipt of the plastic granules. However no duty equal to the credit taken on the plastic granule was paid at the time of removal from the factory. Therefore, we hold that reversal of Modvat credit has rightly been ordered.

7. Regarding imposition of penalty though the claim of the appellant was that it was a clerical mistake but the fact remains that no reversal of Modvat credit was done at the time of removal. We, therefore, hold that imposition of penalty is sustainabie in law.

However looking to the facts and circumstances of the case we find that penalty equal to the amount of credit is not warranted in the instant case. Looking to the facts in its entirety we hold that in the circumstances of the case penalty is too high, the same is reduced to Rs. 5.0 lacs (rupees five lacs) on the company.

8. In so far as imposition of penalty on Managing Director, Shri Suresh Gopichand Keswani, is concerned we note that he was not in India during the material period and was abroad, therefore, the knowledge cannot be attributed to him regarding confiscability of plastic granules removed.

In the circumstances we set aside the order imposing penalty on the Managing Director. The appeals are disposed of in the above terms.