Commissioner of Central Excise Vs. I.T.L. Indus. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-2002

Reported in : (2003)(161)ELT672TriDel

Judge : S Kang

Appellant : Commissioner of Central Excise

Respondent : i.T.L. Indus. Ltd.

Judgement :

1. Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals).

2. Brief facts of the case are that the factory premises of the respondents were searched by the Excise Officers on 21-9-99 and 14 machines were found lying in the factory but the same were not entered in the R.G. 1 register. A show cause notice was issued to the respondents for confiscation of the machines and for imposition of penalty. The adjudicating authority confiscated the machines and ordered release of the same on payment of redemption fine and imposed a penalty of Rs. 25,000/-. The respondents filed an appeal and the Commissioner (Appeals), in the impugned order, held that the machines were found in the factory premises and there was no attempt on the part of the respondents to clear the machines without payment of duty. The Commissioner (Appeals) also held that the respondents can be liable for penal action for violation of Rule 226 of the Rules and imposed a penalty of Rs. 2,000/-.

3. The contention of the revenue is that the goods were found in the factory un-accounted in the statutory record, therefore, they are liable for confiscation. The Tribunal in the case of Bhillai Conductors (P) Ltd. v. C.C.E. reported in 2000 (125) E.L.T. 781 (T) held that in case where the goods were lying and were not accounted for in R.G. 1 when there is no evidence that such unaccountal of goods is with the intent to evade payment of duty, provisions of Rule 173Q of the Rules will not attract penal action and the manufacturer is liable for penalty only of Rs. 2,000/- under Rule 226 of the Rules.

4. In view of above decision of the Tribunal, I find no infirmity in the impugned order. The appeal is dismissed.