Sushil Khanna Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-2002

Reported in : (2002)(84)ECC630

Judge : B T K.K.

Appellant : Sushil Khanna

Respondent : Cce

Judgement :

1. The appellant Shri Sushil Khanna is the Director of M/s. Oscar Laboratories (P) Limited, New Delhi. M/s. Oscar Laboratories (P) Limited manufacture P & P Medicines falling under Chapter heading No.3003. The factory premises of M/s. Oscar Laboratories (P) Limited were visited on 4.9.96 by the Preventive Officers of Central Excise, New Delhi. On verification of the records of the firms, it was found that they were availing the modvat credit of duty paid on two inputs namely Dextro Propoxy Hcl and Paracetamol used solely for the manufacture of Sudinol Tablets. It was observed that the input Dextro Propoxy Phone Hcl was not subject to the Central Excise duty but it was subject to State Excise duty. The party had filed the declaration under Rule 57G mentioning the Sudinol Tablets as final product to avail modvat credit on all the inputs used in the manufacture Sudinol Tabs. Further the party while clearing Sudinol Tablets and P & P medicines had not paid any Central Excise duty but had intentionally shown the rates and amounts of excise duty leviable under M & TP Act on the Invoices in the columns meant for Central Excise duty. The Sudinol Tablets were cleared without payment of duty.

Accordingly, the proceedings were initiated against the party and they were issued a show cause notice dated 26.11.97 by the Assistant Commissioner, Central Excise, MOD-II, New Delhi in which they were called upon to show cause why the modvat credit of Rs. 9,53,899 availed by them during the period 1994-95,1995-96 and 1996-97 should not be disallowed and recovered from them under Rule 57I of Central Excise Rules, 1944 and why a penalty of equal amount should not be imposed on them under Section 11AC, under Rule 57I and Rule 173Q of Central Excise Rules, 1944. In the same notice, Shri Sushil Khanna, Director of the firm was called upon to show cause why a penalty should not be Imposed on him under Rule 209A for willful mis-statement and suppression of facts from the department.

3. On considering the reply of the noticee party, the Deputy Commissioner of Central Excise, New Delhi, vide his order dated 11.1.97 confirmed the demand of the aforesaid amount on M/s. Oscar Laboratories (P) Limited and imposed on them a penalty of equal amount under Section 11AC of Central Excise Act, 1944. He also imposed a penalty of Rs, 2 lakhs on Shri Sushil Khanna, Director of the firm under Rule 209A of Central Excise Rules, 1944.

The appellant Shri Sushil Kumar filed an appeal but the same is dismissed by the Commissioner (Appeals), New Delhi, vide his order dated 19.2.2001.

4. This is an appeal against the Impugned order of the Commissioner (Appeals). I have heard Shri M.P. Devnath, Advocate for the appellant Shri H.C. Verma, JDR for the respondents. The Id. Counsel for the appellant at the outset submits that M/s. Oscar Laboratories (P) Limited have already paid a duty amount of Rs. 9,53,899 and they have not contested the case on merits. He submits that the penalty of equal amount Imposed on them under Section 11AC of Central Excise Act, 1944 has since been set aside by the Tribunal in another proceedings on the ground that these provisions were not in force, when the violation was committed by the party. He contends that the penalty under Rule 209A is not liable to be imposed on Shri Sushil Khanna on its merits. On perusal of the records of this case, however, it is observed that the appellant has never contested his case on merits before either of the lower authorities, It is further observed that an internal

memo was prepared by Shri S.P. Goel, the Authorized Signatory company on 11.10.95 intimating the appellant Shri Khanna about the wrong availment of modvat credit amounting to Rs. 3,24,482 on the inputs used in the manufacture of Sudinol Tablets and sought the permission to reverse the same. It is observed that inspite of the fact that is was in the knowledge of the appellant that the firm was availing inadmissible modvat credit no action was taken by him and the party continued to avail the modvat credit unlawfully. Further a statement was also recorded from the appellant on 15.5.97 in which he admitted that the modvat credit of duty paid on the inputs used in the manufacture of Sudinol Tablets was not admissible to them and he also admitted the lapse on his part. Even in the reply to the show cause notice, he did not contest the charges leveled against the. In this view of the matter, the appellant has not made out a case for setting aside the complete penalty imposed on him. However, the main beneficiary of the whole transaction viz. M/s. Oscar Laboratories (P) Limited have escaped from imposition of penalty on account of technical lapse on the part of the authorities for invoking inapplicable legal provisions against them. It is therefore, considered just and proper that the appellant should also be given a relief in the amount of penalty imposed on him.

I, therefore reduce the penalty to Rs. 50,000 (Rupees fifty thousands) on him. His appeal is thus partly allowed.