Kawatra Papers Ltd. and ors. Vs. Cce

Kawatra Papers Ltd. and ors. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/28642

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-2002

Reported in : (2003)(85)ECC638

Judge : S T G.R., P Bajaj

Appellant : Kawatra Papers Ltd. and ors.

Respondent : Cce

Judgement :
1. These four appeals were heard together as the issue in all the four appeals is the same and arose out of the same impugned order and are being disposed of by this common order.

2. The facts of the case in brief are that the appellants are engaged in the manufacture of paper and paper board of different types such as cream wove paper, duplex, board etc. On a visit to the factory premises Central Excise Officers scrutinised certain records and found that M/s.

Kawatra Papers Ltd. had a Godown of M/s. Himgiri Paper Enterprises (P) Ltd. In the same premises. Statements of various persons including of Shri Jagdish Verma, Gopal Singh Rawat etc. were recorded. A Show Cause Notice was issued to the appellants asking them to explain as to why Central Excise duty amounting to Rs. 22,73,920 and cess Rs. 56,291 for the period from 1.7.94 to 31.3.97 and Rs. 1,13,124 and cess Rs. 2,970 for the period of June 1997 should not be demanded from them and why penalty should not be imposed under Rule 173Q and why interest should not be demanded.

3. Arguing the case for the appellants Shri M. Chandrasekharan, learned Senior Advocate submits that the Show Cause Notice is null and void ab initio inasmuch as the Show Cause Notice was first issued for a later period and later Show Cause Notice was issued for the earlier period; that the invocation of longer period was not sustainable; that the demand prior to 23.5.98 was not sustainable in law as it was time-barred; that there was no suppression of facts; that clandestine removal can neither the alleged nor established on the basis of entries in private records; that the production shown in RG-I register and the production alleged to have been clandestinely removed were totalled, the figure will come to be more than the one shown in the log sheet; that learned Commissioner of Central Excise did not examine this aspect.

4. Learned Senior Counsel also submitted that log sheets in the year 1996-97 as submitted by the appellants disclosed that they contained day-to-day minutes of accounts of the paper produced in rolls; that the appellants had no opportunity to establish the genuineness of log sheets. Learned Senior Counsel submits that left and right sides figures on Page 54 of record No. 7 were totalled and on the assumption that left side figures represented clearances, not entered in RG-I register; that no testimony has been elicited from any one to substantiate this assumption; that it was pointed out if the two figures were totalled, the resultant clearance would exceed 100% of the capacity utilization of the appellant, which was not correct. He submits that a number of points were raised before the Commissioner, Central Excise which were not attended to by him nor were commented upon. He, therefore, prays that the appeals may be remanded so that the matters may be examined by the Authorities in the tight of the various contentions raised as also on examination of the documents available on record.

5. Shri Mewa Singh, learned SDR for Revenue submits that this is a case of clandestine removal; that the definite records were there which indicated that the goods were removed without payment of duty. He reiterated the findings of the Authorities and therefore, prays that the appeals may be rejected.

6. On careful consideration of the submissions made we note that a number of points were raised by the appellants before the learned Commissioner in reply to the Show Cause Notice as also at the time of hearing. We note that certain documents are very material for a decision in the appeals like machine, log sheets and the capacity of the paper mills which were not considered adequately and examined in depth. We consider it a fit case for remand. In the circumstances we remand the cases to the learned Commissioner to examine the various contentions and pass a speaking order specifically in regard to the capacity of the mills, machine log sheets and other contentions. No doubt, the learned Commissioner will provide a reasonable opportunity to the appellants to present their case in defence. Accordingly, the impugned order is set aside and the appeals are remanded.