

Commissioner of Central Excise Vs. Decora Tubes Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-08-2002

Reported in : (2002)(146)ELT703TriDel

Judge : K Kumar

Appellant : Commissioner of Central Excise

Respondent : Decora Tubes Ltd.

Judgement :

1. This appeal filed by the Revenue is against the order dated 21-6-2000 passed by the Commissioner (Appeals'), Customs Central Excise, Bhopal. The issue relates to whether stock verification on the basis of average weight was acceptable; if the same was normal practice in the particular commodity.

2. Shri A.S. Bedi/ learned SDR has appeared on behalf of Revenue and he submitted that the respondents have requested by their letter dated 20th May/ 2002 that the case may be decided on merits.

3 Learned SDR pointed out towards pages 13 of the Order-in-Original wherein the adjudicating authority has noted that Shri Gajendra Katiyar, authorised representative of the appellant was asked to explain the reason behind the above mentioned excess stock. Shri Katiyar in his statement recorded under Section 14 of the Central Excise Act/1944 on 18-10-97 could not give any specific and satisfactory reason for the excess stock in the factory premises and was satisfied

with the manner of the stock taking. Accordingly, the excess stock of finished goods i.e. 26946.98 Kgs (SS Tubes 19271.90 Kgs + Scrap 7675.00 Kgs) valued at Rs. 22/29,260/- and raw materials 8227.00 Kgs valued at Rs. 1,63/049/- was seized under proper pancha-nama dated 17-10-97/18-10-97 on the reasonable belief that the said goods were not recorded in the statutory records RG-I and RG 23A Part-II with intent to remove clandestinely without payment of Central Excise duty. Learned SDR also drew my attention to page 9 of the grounds of appeal wherein Nagpal Steel Pvt. Ltd. and M/s. Hi-Tech Pipe Ltd. have been relied on in the present appeal. Learned SDR drew my attention towards para 5 of the Hi-Tech Pipe Ltd. reported in 1996 (88) E.L.T. 302 wherein this Tribunal has with reference to the coils and finished Block Pipe Tubes/ recorded that the system of weighment on the basis of estimation is in practice.

4. Similar view has been expressed in the Nagpal Steel Pvt. Ltd. reported in 1995 (79) E.L.T. 463. Learned SDR drew my attention towards para 6, wherein this Tribunal has categorically held that such weighment is based on ones best judgment and whereas, the assessee himself is of the opinion that average weighment which is prevalent in the industry and which he himself has been adopting, should be accepted. In the present case the learned SDR has submitted that authorised signatory himself accepted in his statement clearly the weighment. Hence he prayed that impugned order may be set aside and the appeal allowed.

5. After hearing the learned SDR and perusal of the records I find that Commissioner (Appeals) has wrongly allowed the appeal of respondent as the case is clearly based on admission of the respondent and the factual position has never been disputed so far. Therefore, the impugned order is set aside and the appeal filed by the Revenue is allowed.

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