

Nitin Steels Vs. Commissioner of C. Ex. and Cus.

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SooperKanoon Citation : sooperkanoon.com/28731

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-20-2002

Reported in : (2003)(151)ELT422Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Nitin Steels

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. Appeals taken up for disposal with the consent of both sides, after waiving deposit.

2. Nitin Steels of which the proprietor is Rekha Singhal and Tightwell Fasteners the proprietor is J.N. Singhal, both manufacturer bolts and studs. The notice issued to these concerns and to their proprietors alleged that Nitin Steels did not have an independent existence and proposed to add the value of clearances made by it to the value of clearances made by Tightwell fasteners, and alleged consequent short levy of duty by denying to Tightwell Fasteners the exemption contained in Notification 1/96, and proposed penalties on each of these appellants before us. Adjudicating on these notices, the Additional Commissioner in each of his two orders, confirmed the demand for duty, and imposed penalties. The aggrieved parties appealed these orders to the Commissioner (Appeals). The first set of the appeals is against the order of the Commissioner (Appeals) confirming the order of the Additional Commissioner who had demanded duty and imposed

penalties.

The second set of appeals is against the order of the Commissioner (Appeals) dismissing the appeals for failure to deposit the duty.

3. In each of these order impugned in the first bunch of appeals, the, Additional Commissioner has said that on the order to club the value of clearances of Nitin Steel and Tightwell Fasteners and ordered recovery of duty of excise of Rs. 17,10,260/-. He has thereafter imposed penalties on Nitin Steel and Tightwell Fasteners.

4. The common counsel for the appellants contends that this order is contradictory in that it attributes the clearances made by Nitin Steel to Tightwell Fasteners on the ground that Nitin Steel is not an existing entity, duty is demanded from this non-existent entity and penalty imposed on it. He cites the judgment of the Supreme Court in *Gajanan Fabrics Distributors v. CCE - 1997 (92) E.L.T. 451*. In this judgment the Supreme Court has said that by not confirming the demand of the seven units, the clearance of which are sought to be clubbed, the Collector appeared to have implicitly recognised their independent existence. It therefore set aside the order of the Tribunal confirming his order and remanded the matter to the Commissioner for reconsideration. When confronted with this position, the departmental representative is unable to reconcile what appears to be the two contradictory stands. In the light of this, we are of the view that the ratio of the Supreme Court is squarely applicable to the facts before us. The basis for denial of the exemption to Tightwell Fasteners is only on the view that Nitin Steels is not a separately existing unit, and the clearances purportedly made by it were actually made by Tightwell Fasteners. This is not compatible with the order of the Additional Commissioner demanding duty from Nitin Steels, and imposing penalty on it. In other words, the order demanding duty from, and imposing penalty on a non-existing firm cannot be supported.

5. The appeals are accordingly allowed and the impugned order set aside. The matter is remanded to the Additional Commissioner who shall adjudicate upon the notices afresh in accordance with law.