

Cce Vs. Bihar Tubes Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-13-2002

Reported in : (2003)(86)ECC473

Judge : S T G.R., P Bajaj

Appellant : Cce

Respondent : Bihar Tubes Ltd.

Judgement :

1. Revenue has filed this appeal being aggrieved by the order passed by the Ld. Commissioner of Central Excise dropping proceedings in regard to duty amounting to Rs. 36,70,183 and penalty under Section 11AC read with Rule 9(2) and 173Q of the Rules.

2. The facts of the case are that the respondent herein are engaged in the manufacture of Galvanized and Black M.S. Pipes and Tubes. Central Excise Officers visited their factory and conducted stock verification.

They found an excess of 75 M.T. in stock of Galvanised Iron Pipes and 70 M.T. in the stock of Black pipes.

3. During the search of the premises, the officers came across a private register maintained by the respondents herein. Statements of Shri M.P. Gupta, General Manager, Shri Sanjay Gupta, Director and Shri Narendra Prakash Sharma, Service Engineer were recorded. On a scrutiny of the documents, it was alleged

that they had clandestinely removed goods on which Central Excise Duty amounting to Rs. 36,70,183 was involved, it was also alleged that they had wrongly taken Modvat credit amounting to Rs. 3,52,445. Accordingly, a SCN was issued to the respondent herein asking them to explain as to why Central Excise Duty should not be demanded from them and why penalty should not be imposed, Ld. Commissioner adjudicated the case and disallowed Modvat credit amounting to Rs. 3,52,445, ordered appropriation to duty amounting to Rs. 1,03,159 and imposed a penalty of Rs. 3,52,445 but dropped the demand of Rs. 36,70,183. The present appeal filed by Revenue is against dropping of this demand and non-imposition of penalty and non-demand of interest.

4. Arguing the case for Revenue Shri Mewa Singh, Ld. DR submits that in the instant case the adjudicating authority has wrongly dropped the demand of duty amounting to Rs. 36,70,183. He submitted that the stock of finished goods was physically verified in the presence of Shri Sanjay Gupta, Director and Shri M.P. Gupta, General Manager who admitted that there was an excess of 75 M.T. in the stock of GI Pipes and 70 M.T. in the stock of Black Pipes. He submitted that the findings of the Ld. Commissioner that the physical stock checking was done on eye estimation was not correct. Ld. DR submitted that the private register seized from the premises revealed that day-to-day production of Galvanised Pipes was being recorded in this register; that Shri Narendra Prakash Sharma working in galvanizing department deposed that the said register has been maintained by him and that it contained information in regard to date, size, number of pipes, tonnage, surface area, zinc addition etc. Ld. DR submits that according to this register, there was an excess production of 1359.327 M.Ts. in respect of Galvanised Pipes and an excess use of zinc of 134.151 M.Ts. as compared to R.G.I and R.G.23A Part I Registers. Referring to Section 36A of Central Excise Act, 1944, Ld. DR submits that this section provides: "Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the Court shall (a) unless the contrary is proved by such person presume the truth of the contents of such document." Ld. DR submits that in spite of the fact that the register was showing detailed accounts, Ld. Commissioner while adjudicating

the case did not pay any head to the figures of this register.

5. Ld. DR submits that the respondent herein disposed of 302398 sockets without reversing the Modvat credit availed thereon. Ld. DR submitted that though credit has been disallowed by the adjudicating authority but no penalty on that account has been imposed. Ld. DR, therefore, prayed that the appeal may be allowed.

6. Shri Randhir Singh, Ld. Counsel appearing for the respondent submits that no doubt a register was seized from the premises of the appellant but the figures in the register were not corroborated by any evidence.

He submits that it has now been contended by Revenue that in view of the fact that there was an excess of Black Pipes as well as Galvanised Iron Pipes at the time of physical verification of the stock. This corroborates that figures in the register were correct. Ld. Counsel submits that the Tribunal has been consistently holding that recording in a private register cannot form the basis of demand of duty unless entries therein are corroborated by independent evidence. He submits that the excess of black pipes and galvanised pipes were not independent corroborative evidence. Ld. Counsel submits that even the excess was calculated on the basis of eye estimation and not on actual weighment. He submits that this fact was brought to the notice of the authorities immediately after the stock verification report. He submits that thus the figures noted as excess by the authorities are not correct as those figures were based purely on eye estimation and not on actual weighment basis. Ld. Counsel submits that in the absence of sufficient corroborative independent material, Ld. adjudicating authority rightly dropped the proceedings.

7. Ld. Counsel prays that the impugned order may be upheld and the appeal filed by Revenue may be rejected.

8. We have carefully considered the oral submissions of both the sides as also the evidence on record and the findings rendered by the Ld.

Commissioner who adjudicated the case. We note that the case of the Revenue is based on the figures recorded in a private register. We find that Revenue has not

been able to corroborate these figures by any tangible evidence independent of the register. We find that the main thrust of the arguments and contentions of Revenue are that there was an excess noticed at the time of stock verification and this excess corroborates the fact that the appellant had produced and removed clandestinely goods in excess of those recorded in the statutory records. We note that this contention is not correct inasmuch as the excess stock itself has been questioned by the respondent herein. There is no evidence of either removal of the goods or their sale to any person or that the raw-materials used in the manufacture of the final product were being procured in excess and only small figures were being shown in the statutory records.

9. We agree with the contention of the Ld. Counsel for the respondent that the consistent view held by the Tribunal in such cases is that the figures recorded in a private register must be corroborated by independent evidence. In the instant case, there is no independent evidence to corroborate the figures recorded in the private register seized in the premises of the appellant. We have carefully perused the findings of the adjudicating authority. We find that the adjudicating authority has brought out the matter clearly and has following the consistent view of the Tribunal in regard to the acceptance of figures recorded in a private register dropped the demand correctly.

10. Having regard to the above discussions, we do not see any reason to interfere with the impugned order. The impugned order is, therefore, upheld and the appeal is disposed of accordingly.

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