

Jindal Packaging Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-08-2002

Reported in : (2003)(154)ELT202TriDel

Judge : P Bajaj

Appellant : Jindal Packaging

Respondent : Commr. of C. Ex.

Judgement :

2. The appellants have got strong prima facie case. They are SSI unit and had not crossed the prescribed limit as even observed in the impugned order by the Commissioner (Appeals). Therefore, the stay application of the appellants is allowed.

3. With the consent of both the sides. I proceed to hear the appeal on merits also.

4. This appeal has been filed by the appellants against the impugned Order-in-Appeal dated 10-4-2002 passed by the Commissioner (Appeals) vide which he had modified the Order-in-original dated 6-12-99 of the A.C.5. The facts are not much in dispute. The appellants are engaged in the manufacture of plastic printed laminated flexible sheet/films. Their factory was visited on 6-8-97 by the central excise officers and on checking, the stocks, some finished goods as well as raw material were found unaccounted, in their record and the same were seized. It also revealed that they had not filed declaration under Rule 174 of the Central

Excise Rules and even had not taken central excise registration. They were, accordingly, served with show cause notice vide seized goods valued at Rs. 6,62,590/- as well as raw material value at Rs. 12,55,440/- were proposed to be confiscated and penalty was also proposed to be imposed on them. The appellants contested the show cause notice by pleading that they were SSI unit and their clearances had not exceeded the prescribed limit and as such, they were not supposed to take the central excise registration and file declaration under Rule 174 of the Rules. No statutory record was required to be maintained by them strictly.

6. The adjudicating authority, however, did not accept the version of the appellants and ordered confiscation of the seized finished goods and raw material and also imposed redemption fine of Rs. 1,50,000/- and personal penalty of Rs. 1,50,000/- under Rule 173Q of the Rules on the firm appellant and personal penalty of Rs. 5,000/- on Shri S.C. Gupta its partner. The Commissioner (Appeals) reduced the redemption fine to Rs. 62,260/- and personal penalty to Rs. 50,000/-. He also set aside penalty imposed on the partner of the firm, but maintained the rest of the order-in-original.

8. Admittedly, the appellants are SSI unit. It had been nowhere alleged in the show cause notice that they had crossed the exemption limit. The Commissioner (Appeals) has, in the impugned order (para 5.4), observed that being a SSI unit, the appellants were not required to maintain any statutory record. However, he has further observed that the appellants were liable to maintain some simplified records in support of their claim that they had not crossed the exemption limit.

But his these observations for affirming the Order-in-original, are self contradictory. When he had come to the conclusion that the appellants had not crossed the exemption limit, and even there was no such allegations in the show cause notice against the appellants, then the question of maintaining the statutory record by the appellants, did not arise for proving that they had not crossed the exemption limit.

9. Regarding maintenance of simplified records, the findings of the Commissioner (Appeals) that no such record was maintained, cannot be sustained. The bare

perusal of the panchnama which is at page 16A of the paper book, shows that ledger, cash book, papers regarding stock account, Modvat credit documents, attendance register, RG-1 register (in all 138 documents) were seized by the central excise officers at the time of inspection of the factory on 6-8-97. Even the statement of finished goods was also prepared and so also of the raw material, copies of which are at pages 19A to 19E & 20 of the file. Therefore, it is difficult to conclude that that the appellants were not maintaining any simplified records regarding their finished goods and raw material.

Rather it is evident that they were maintaining the records for both these goods. No discrepancies in those records were found. No allegations that they had exceeded the exemption limit, had been levelled against the appellants, as observed above. That being so, neither seizure nor confiscation of the finished goods and raw material lying in the factory premises of the appellants, under the law, could be ordered. No personal penalty could also be imposed on them under Rule 173Q of the Rules.

10. In view of the discussions made above, the impugned order of the Commissioner (Appeals), cannot be legally sustained and the same is set aside. The appeal of the appellants accordingly stands allowed with consequential relief, permissible under the law.

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