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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-22-2002

Reported in : (2002)(84)ECC490

Judge : A T V.K.

Appellant : Pratik Panels Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Pratik Panels Ltd. have filed the present appeal being aggrieved with the Order No. 263/2001, dated 23-8-2001 under which the Commissioner, Central Excise has confirmed the demand of Central Excise duty amounting to Rs. 84,466/-, imposed a penalty of Rs. 1 lakh under Rule 173Q and Rule 226 of the Central Excise Rules, 1944 besides imposing penalty of Rs. 4,466 under Section 11AC of the Central Excise Act read with Rule 57-I(4) and confiscated the finished final products and raw materials found in excess with an option to them to redeem the same on payment of fine of Rs. 5 lakhs.

2. Shri Ravi Raghvan, learned Consultant, submitted that the appellants manufacture Veneers (decorative and face Veneers), Commercial and Decorative Plywood, Black Boards, Inlay Veneer Strips, Veneer Fibre Board and Wooden Edge Lipping Patti of various sizes, thickness and quality; that Central Excise Officers, on 11-2-99 ascertained the stock position in the factory and in godown opposite factory premises and seized finished goods worth Rs. 15,14,423 and raw

material valued at Rs. 5,78,755 found in excess in the factory premises; that the officers also seized the finished goods and raw materials kept in outside godown; the officers also noticed shortage of decorative veneer and raw material; that subsequently the matter has been adjudicated by the Commissioner under the impugned Order demanding duty on the finished products and raw material found short and confiscating the goods found in excess. The learned Advocate, further, submitted that the appellants had undertaken the major construction work of factory coupled with installation of big machinery, which occupied considerable space in their factory premises resulting in acute shortage of place; that under these circumstances, they were compelled to transfer some of their finished goods and raw materials to temporary godown situated opposite their factory premises and the said transfer was done under the belief that the same also constituted part of the licensed premises of the factory; that under the said belief they did not give any intimation to the Department about the transfer of goods.

3. As regards the excess finished goods, the learned Consultant explained that it is the practice in their industry, that certain material which is of a discarded nature, which can neither be booked in good quality nor can be booked in scrap till the stage of its disposal has to remain as such in the factory and such quantity is booked periodically in RG-I; that, therefore, the same cannot be considered as excess stock in comparison to RG-I; that there was no excess of raw material as it is the practice in their unit that quantity of raw materials is subtracted from RG 23 - Part I only after ascertaining the actual quantity utilised in the manufactured goods and such debit entries are made periodically; that thus, factually, there was no excess stock in RG 23A Part-I Register. The learned Advocate also contended that as there was no intention to evade payment of duty on their part, the goods were not liable for confiscation; that there is no act on their part which remotely suggests that they have acted mala fidely with intention to avoid the payment of duty. He relied upon the decision in P.R. Auto Industries v. C.C.E., New Delhi, 2000 (122) E.L.T. 402 (T) and Pepsi Foods v. C.C.E., Chandigarh, 2002 (139) E.L.T.658 (T) = 2001 (47) RLT 925 (CEGAT). Reliance has also been placed on the decision in C.C.E., Allahabad v. Pravesh Castings (P) Ltd., 2001 (136) E.L.T. 1185 (T) and CCE, Hyderabad v. Sunder Silk Mills P. Ltd., 2001 (137) E.L.T. 609 (T). Finally, the learned Advocate pleaded for reduction in redemption fine and

penalty.

4. Countering the arguments, Shri S.C. Pushkarna, learned D.R., submitted that Shri J.M. Singhvi, Executive Director, in his statement dated 12-2-99, had admitted that there was shortage/excess in the stock of finished goods and inputs in the factory when compared with the balance recorded in RG I and RG 23-Part I register; that he had also admitted removal of goods to the godown without observing Central Excise procedure and without payment of duty. The learned D.R. has also reiterated the findings as contained in the impugned Order. Wherein the Commissioner has given his findings that there is no provision under the Central Excise law to keep so called substandard goods unaccounted and these goods should have been accounted for in column 15 of RG-I.The learned D.R. also relied upon the decision in the case of Kirloskar Brothers Ltd. v. U.O.I., 1988 (34) E.L.T. 30 (Bom.) = 2002 (83) ECC 497 (Bom.) wherein it has been held by the Bombay High Court that "Clauses (a), (b) and (c) of Sub-rule (1) of Rule 173Q do not admittedly use the expression 'with intent to evade payment of duty', which is found in Clause (d) thereof. It can, therefore, be prima facie, assumed that the liability in terms of Rule 173Q (1), Sub-clauses (a), (b) and (c) does not depend upon mens rea." 5. I have considered the submissions of both the sides. The shortage of finished goods and raw materials in respect of which Modvat credit had been taken by the appellants has not been disputed. Similarly the excess of goods found by the officers at the time of visit of the factory premises has not been disputed by the appellants. They have only submitted explanation for the same. In fact, in respect of shortage noticed in Decorative Veneer, the appellants have not been able to give any explanation as even in Memorandum of Appeal they have only mentioned that "this is on account of some accounting errors in RG 1 Register and the same is being traced out." The explanations offered by the Appellants are not acceptable as the removal of finished goods outside the factory premises has to take place only under the cover of Central Excise Invoice and on payment of duty unless the finished goods are exempted from payment of duty. The outside godown cannot be treated as a part of the factory. Similarly the inputs in respect of which Mod-vat credit had been taken of the duty paid, can be removed from the factory only on payment of duty or for further processing, etc. The learned Advocate could not explain satisfactorily as to how there was excess stock of

imported commercial ply wood instead of shortage taken by the adjudicating authority. Accordingly I find no reason to interfere with the demand of duty made in the impugned Order. I agree with the findings of the adjudicating authority that the practice adopted by them for recording the production of goods is not provided anywhere in Central Excise Rules. The finished goods are not to be recorded periodically in the RG 1 Register. Similarly the entries are not to be made in RG 23-Part I register periodically. The entries are to be made as and when the inputs are removed, Rule 173Q of the Central Excise Rules, 1944 provides for confiscation of goods and imposition of penalty if the excisable goods are removed in contravention of any of the provisions of Rules and/or goods manufactured, produced or stored are not accounted for. As held by the Bombay High Court in Kirloskar Brothers case, liability in terms of Clauses (a) and (b) of Sub-rule (1) of Rule 173Q does not depend upon mens rea. Accordingly the goods found in excess are liable for confiscation as well as penalty is imposable on the appellants. However, considering the facts and circumstances of the matter, I agree with the learned consultant that the penalty imposed and redemption fine demanded are on higher side and there is no warrant for imposing the penalty both under Section 11AC of the Central Excise Act and under Rule 173Q of the Central Excise Rules.

I, therefore, reduce the entire penalty to Rs. 25,000/- and the redemption fine to Rs. 1 lakh only. But for the modification, the appeal is rejected.

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