Friends Wire Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-25-2003

Reported in : (2003)(156)ELT218TriDel

Judge : K Usha, N T C.N.B.

Appellant : Friends Wire Industries

Respondent : Cce

Judgement :

1. The present appeal relates to confiscation of raw-materials and goods under process, on the ground that they were not accounted in the books and the assessee had kept them out of the accounts with intention to use them for manufacturing finished products for clandestine removal without payment of Central Excise duty. The impugned order has confiscated goods valued at about Rs. 4 lakhs an has given the appellants an option to redeem them on a payment of a fine of Rs. 1 Lakh. A penalty of Rs. 25,000 has also been imposed. Rule 173Q of the Central Excise Rules has been invoked. The order also mentions Rule 2. The appellant's contention all along has been that the goods in question are not offending in any manner, inasmuch as, they are only raw-materials and goods in process which are not liable to duty in the hands of the appellant, They have also pointed out that the charge of non-accountal of the goods in the raw-material account with intention to evade payment of duty is also not maintainable, inasmuch as, the appellant had purchased these goods from a manufacturer after making payment by Cheque and the purchase is entered in the cash book. It is the

appellant's explanation that if intention to evade payment of duty was there, goods would not have been entered in the cash book either.

3. We have perused the records and have considered the submissions made by both sides. We find merit in the submissions of the appellant. The goods had not become finished items liable to Central Excise Duty. The fact of their entry in the cash book goes against the allegation that the raw-materials were brought clandestinely to manufacture them into finished goods and to clear them without payment of duty. Rule 173Q has no application to the facts of the present case, inasmuch as, the appellant had not carried out any of the offences mentioned in that Rule. The order itself does not mention, which Clause of Rule 173Q is attracted, The reference to Rule 226 may have some basis, since that Rule relates to keeping of entry books, stock accounts, warehouse Registers etc. properly. However, the penalty provided under this Rule is only to the extent of Rs. 2000 and the confiscation of the goods.

From the quantum of punishment, it is clear that lower authorities were not having this Rule in mind, while taking action against the appellant.

4. The action taken by the lower authorities are not sustainable in the facts and circumstances of the case. The impugned orders are accordingly, set aside and the appeal is allowed with consequential relief, if any, to the appellant.