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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-13-2003

Reported in : (2003)(162)ELT354TriDel

Judge : P Chacko

Appellant : Oswal Sugars Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The applicants pray for waiver of pre-deposit and stay of recovery in respect of an amount of penalty of Rs. 1 lakh.

2. Examined the records and heard both the sides. Officers of Central Excise visited the applicants' factory in December, 1997 and found, on stock verification, an excess of 203 bags of sugar vis-a-vis RG 1 recorded balance, and they seized the goods. The Department by show cause notice proposed to confiscate the goods and impose penalty on the party under Rule 173Q of the Central Excise Rules, 1944. The proposal was contested. The original authority ordered confiscation of the goods with option to the party to redeem the same on payment of a fine of Rs. 1 lakh. It also imposed a personal penalty of Rs. 2 lakhs on them. In the appeal preferred by them against the order of the original authority, the Commissioner (Appeals) upheld the lower authority's decision on merits but reduced the quantum of fine and penalty to Rs. 50,000 and Rs. 1 lakh respectively. The learned Counsel for the appellants submits that their case falls

under Clause (d) of Rule 173Q(1) which requires mens rea for imposition of penalty. Neither the show cause notice nor any of the authorities below has attributed any mens rea to the applicants in their omission to account for the above goods in the RG 1. Hence the penalty imposed on them requires to be set aside. The order of confiscation is also challenged on the same ground.

The learned Counsel relies on the decision of the Tribunal in Bhillai Conductors Pvt. Ltd. v. CCE, Raipur 3. The learned DR, on the other hand, submits that non-accountal of excisable goods in RG 1 register amounts to contravention of Rule 53 of the Central Excise Rules, 1944 attracting a penalty not less than Rs. 5,000/- and not more than three times the value of the goods in terms of Clause (b) of Rule 173Q(1). The learned DR relies on the decision of the Bombay High Court in Kirloskar Bros. v. UOI reported in 1988 (34) E.L.T. 30 (Bom.) = 2002 (83) ECC 497. He submits that, in the instant case, the value of the goods was Rs. 2.8 lakhs and, therefore, the penalty of Rs. 1 lakh could by no means be considered to be unreasonable.

4. After carefully examining the rival submissions, I find that, on the merits of the case, the decision of the High Court operates in favour of the Revenue while the decision of the Tribunal in Bhillai Conductors, case is in favour of the appellants. The High Court decision would prevail. In so far as the quantum of penalty imposed by the lower authorities is concerned, I find that the discretion conferred by the Statute has not been properly exercised by any of the lower authorities. The minimum penalty under Rule 173Q is Rs. 5,000/- and the maximum is three times the value of the goods. The wide range provided under the rule indicates the measure of discretion inherent in the penalizing authority which has to examine the facts and circumstances of the case and determine the extent of penalty to be imposed. In the instant case, it had been consistently pleaded that 203 bags of sugar were lying in the factory and there was no intention to remove the goods clandestinely. Further there is no allegation of mens rea nor any finding thereof in this case. The absence of mens rea would also be a relevant consideration in the determination of quantum of penalty. None of the authorities below has addressed the issue in this manner. Thus the applicants have made out a strong prima facie case in relation to the quantum of penalty. In the circumstances, I am inclined to

grant waiver of pre-deposit and stay of recovery of the penalty in excess of Rs. 25,000/-. This amount of Rs. 25,000/- shall be deposited within a period of six weeks from today. Report compliance on 21st April, 2003.

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