Orient Cerwool Ltd. Vs. Commissioner of Cen. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-10-2003

Judge : J Balasundaram

Appellant : Orient Cerwool Ltd.

Respondent : Commissioner of Cen. Excise

Advocate for Pet/Ap. : Shri. J.C. Patel

Judgement :

1. The appellants are engaged in the manufacture of ceramic fibres falling under Chapter 68 of the schedule to 20.1.95, the jurisdictional Range Officer visited their factory and found that the RG.1 register entries were not made for the period 1.1.95 to 19.1.95 although excisable goods had been manufactured and cleared on payment of duty under regular invoices during this period. Therefore, in order to ascertain the exact stock position, physical verification was carried out of finished goods lying in BSR and outside, but near the BSR. The excess stock was seized; show cause notice proposing confiscation for non accountal, confirmation of duty amount and imposition of penalty was issued. The adjudicating authority confiscated the goods with option to redeem them on payment of fine of Rs. 5 lakhs and imposed a penalty of Rs. One lakh on the company and a penalty of Rs. 10,000/- on the company secretary. The Commissioner (Appeals) upheld the adjudication order. Hence, this appeal.

2. I have heard Shri J.C. Patel ld.Counsel for the appellants and Shri H. Kotikar, SDR for the Revenue. I find that the case of the department is that of non accountal of goods in statutory records. Therefore, the ratio of the Tribunal's decision in the case of Bhillai Conductors (P) Ltd. v. CCE, Raipur [2000 (125) E.L.T. 781] is directly applicable. In that case, the Tribunal has held that Rule 173Q(1)(b) of the Central Excise Rules which provides for liability to confiscation and penalty of goods not accounted, cannot be read in isolation and it should be read with other provisions of Rule 173Q. This judgment has been followed by me subsequently in the case of Vandana Tex Dyes v. CCE, Vadodara (Order No. CI/1312/WZB/2002 dated 14.5.02). Following the ratio of the orders, I set aside the confiscation of the goods and reduce the penalty to Rs. 2,000/- (Rupees two thousand only) under Rule 226 of the Central Excise Rules, 1944.