U.T. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-2003

Reported in : (2003)(89)ECC271

Judge : S Kang

Appellant : U.T. Ltd.

Respondent : Cce

Judgement :

1. Appellant filed this appeal against the order-in-appeal passed by the Commissioner (Appeals). The appellants in the manufacture of Pumps, Hydraulic Lift Assembly. The Officers of the Central Excise visited the factory on 19.9.1999 and on verification of the record the following discrepancies are found in their statutory record.

(i) 532 pieces of Pumps were found without any entry in the statutory record.

Certain slips were recovered which shows the clearances of the goods without payment of duty of Rs. 25,279.00 and Rs. 14,756.00.

2. The goods sent to the job work not received back within the prescribed period as provided under Rule 57G of the Central Excise Rules. These goods involved duty of Rs. 48.115.00.

3. After issuing a show cause notice the adjudicating authority confiscated the 532 pumps and allowed the release of the same on payment of redemption fine of Rs. 10,000. The aluminum scrap was also confiscated and allowed to release on payment of redemption fine of Rs. 5,000. The duty of Rs. 88,150,00 was confirmed. A penalty of Rs. 88,150.00 was imposed under Section 11AB of the Central Excise Act, 1944 and Rule 57(1) of the Central Excise Rules. A penalty of Rs. 5,000 was imposed under Rule 173Q of the Central Excise Rules, 1944.

5. The contention of the appellant is that on the seizure of 532 pumps, no duty was demanded on these pumps, as these are duty paid. These pumps were cleared to the other Branch of the appellant and received back to remove the defects. The contention of the appellant is that when the duty paid goods were found in the factory, the confiscation is not sustainable.

6. The contention of the Revenue is that the goods were received for repair and appellants had not asked for any permission from the Competent authority under Rule 173H or 173L of the Central Excise Rules for received such and no D-3 intimation was submitted by the appellants.

7. The contention of the appellant is that the goods were received for repair as there are some defects in the goods. As appellant had not followed the procedure provided under Central Excise Rules for receiving duty paid goods for repair. Therefore, the confiscation of the goods is upheld.8. In respect of the recovery of the scrap, the appellants admitted that the scrap was not entered in any statutory record. The contention is that the scrap is being sent to the job worker for conversion into slabs and the appellants are maintaining the record of slabs.

9. As the scrap is arising out of the manufacturing process undertaken by the appellant, therefore, they are liable to maintain the record in respect of such scrap. Therefore, the impugned order in respect of confiscation of scrap is upheld.10. In respect of the demand on the basis of slips recovered from the appellant's premises on which no duty has been paid, the contention of the appellant is that the goods were sent out from the factory on the returnable basis for testing. On specific query from the Bench, the appellants were unable to explain what goods were sent for testing and in respect of the place of the test facility, no reasonable

explanation was given by the appellants. The appellants admitted the facts of recovery of the slips and removal of the goods without payment of duty.

Therefore, the demand is upheld.11. In respect of the demand of the goods sent to job, work which were not received back during 180 days, the contention of the appellants is that the goods were received back after the time period provided under Rule 57J and they are entitled for the benefit of the MODVAT credit.

The issue involved in the appeal is the reversal of the credit taken on the inputs which were sent to the job workers and were not received back within 180 days, the manufacturer as to reverse the credit taken on such inputs. The appellants are admitting that the goods were received after 180 days from their job workers. Therefore, the demand in respect of such goods are sustainable, hence upheld.12. The penalty of Rs. 88,150.00 was imposed on the appellants which is equal to the demand. We find that the Tribunal in the case of Escorts JCB Ltd. v. Commissioner of Central Excise, New Delhi, 2000 (118), E.L.T. 650 (Tribunal) held that the penalty provided under Section 11AC of Central Excise Act, 1944 is the maximum penalty and the adjudicating authority has discretion to impose lesser penalty. In view of the above decision of the Tribunal and taking the facts and circumstances of the case, the penalty under Section 11AC read with Rule 57(1) of Central Excise Rules is reduced to Rs. 40,000 (Rupees Forty thousand only), otherwise the impugned order is upheld. The appeal is disposed of as indicated above.