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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-26-2003

Reported in : (2003)(157)ELT304TriDel

Judge : S Bajaj

Appellant : Ashok Joshi

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been filed by the appellant against the impugned order-in-appeal vide which penalty of Rs. 1,50,000/- under Rule 209A has been affirmed against him.

2. The facts are not much in dispute. The appellant is an iron and steel scrap dealer supplying goods to various parties including M/s.

Ashoka Adhar Castings Pvt. Ltd. The department booked the said company for having contravened the various provisions of Central Excise Rules, by indulging in clandestine removal of the goods, during the month of August, 97. Show cause notice was issued to that company as well as to the present appellant against whom the allegations made were that he was looking after the affairs of that company and one of the employees of that company namely Ranjit Singh, in his statement, disclosed that clandestine removal of the goods was made from the factory of the company at the instance of the present appellant. The Adjudicating

Authority confirmed the duty demand against the company of Rs. 1,76,392/- with penalty of Rs. 1,50,000/-. Against the present appellant, penalty of Rs. 1,50,000/- has been confirmed under Rule 209A.4. Appellant, is admittedly, neither partner nor relation of any of the partners of the company M/s. Ashoka Adhar Casting Pvt. Ltd. He is only a supplier of raw material to that company. The plea of the department that he was looking after the affairs of the company at the relevant time and was present at the time when the raid was conducted at the factory premises of the company by the officers, does not stand substantiated from any tangible evidence. The statement of Ranjit Singh, an employee of the company that the goods were removed from the factory premises at the instance of the appellant could not be used against the appellant at all having been recorded at his back.

Moreover, he himself has admitted that the present appellant was only a scrap supplier to the company. Similarly, the statement of Anil Sharma, one of the directors of the company that he has authorised the present appellant to look after the affairs of his factory, could not be relied upon against the appellant, as it did not find corroboration from any other evidence. In the show cause notice, it has been alleged rather that Lalit Sharma, one of the directors of the company was looking after the affairs of the company.

4 No statement of the present appellant was recorded at all. From the file, it is evident that infact, some dispute arose between the officers of the Central Excise and the official/partners of the company and Sandeep Sharma, Inspector of the Central Excise, even lodged a report with the police. But the said report was found to be false. At the time of incident, the present appellant was also allegedly present in the factory premises. It is, under these circumstances, that he had been also roped in the case booked against the company for clandestine removal of the goods. Otherwise, there could not be any cause for implicating him in the case when he has got no concern in any capacity with the company. He is only a raw material supplier of that company.

5. There is no evidence on record to prove that the appellant ever helped the above said company in the removal of the goods in a clandestine manner, having

no concern with that company. Therefore, no case under Rule 209A is legally made out against him.

6. Consequently, the impugned order of the Commissioner (Appeals) is set aside to the extent to which it has been challenged in the present appeal against the present appellant. The appeal of the appellant is allowed with consequential relief if any, permissible under the law.