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Commissioner of Central Excise Vs. R.M. Steels (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-2003

Reported in : (2003)(160)ELT1083TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : R.M. Steels (P) Ltd.

Judgement :

1. The Revenue has contested the correctness of the impugned Order-in-appeal, in all these three appeals. The Commissioner (Appeals) has modified the Order-in-original by setting aside the confiscation of the goods and redemption fine and reduced the penalty to Rs. 5,000/- each on the respondents.

2. The proceedings were initiated against the respondents as certain excessive goods were found in their premises at the time of visit by the officers of the Central Excise on 15-11-2000. They were served with Show cause notices proposing confiscation of the goods, imposition of redemption fine and penalty. The adjudicating authority confirmed the show cause notices and ordered confiscation of the seized goods and imposed redemption fine and penalty of various amounts as detailed in the Order-in-original, besides personal penalty on the respondents. The Commissioner (Appeals) has modified the order and reduced penalty to Rs. 5,000/- on the respondents.

3. The learned SDR has contended that once excess goods were found in the premises of the respondents, they were rightly ordered to be confiscated by the adjudicating authority. Redemption fine and penalties were also rightly imposed. The Commissioner (Appeals) has wrongly set aside the same. Therefore, the impugned order passed by the Commissioner (Appeals) deserves to be set aside.

4. On the other hand, the learned Counsel has reiterated the correctness of the impugned order.

6. The perusal of the record shows that the goods confiscated in the factory on account of non-accountal were in fact rejected goods and those were not required to be entered in the RG-1 for having not reached the stage of finished goods. That being so, the Commissioner (Appeals) has rightly set aside the confiscation of the same. The goods which were not fully finished goods were not required to be entered into the RG-1 register till had reached the finished stage and became fit for removal from the factory. No material on the record has been brought to prove that the seized goods were in fact finished goods, and were intended to be removed from the factory premises, by the respondents, without payment of duty.

7. The plea of the department that the goods were being attempted to be loaded in the vehicle had been rightly not accepted by the Commissioner (Appeals). There is nothing on the record if the said vehicle was seized and the driver or owner of the vehicle was proceeded against.

The learned Commissioner (Appeals) has recorded the detailed reason in his order for setting aside the confiscation of the goods. I also do not find any sufficient ground to disagree with this finding, keeping in view the above referred facts and circumstances. The reduction in the penalty taking into account the lapse on the part of the respondents has been rightly done by the Commissioner (Appeals). I do not find any illegality in the discretion exercised by him.

8. The learned SDR has placed much reliance on the ratio of law laid down in the case of Media Video Ltd. v. CCE, New Delhi, reported in 2003 (160) E.L.T. 609 (Tribunal) = 2003 (55) RLT-407, wherein video cassettes were found unaccounted and no explanation for the same was offered by the as-sessee. The Tribunal

observed that the clandestine removal of other goods was indicated from intention of the assessee and upheld redemption fine and penalty. But such is not the position in the case in hand, in the light of the facts and circumstances discussed above.

9. In view of the above discussions, the impugned order of the Commissioner (Appeals) is upheld and all the appeals of the Revenue are dismissed.

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