

Commissioner of Central Excise Vs. D.P. Wire Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-27-2003

Reported in : (2003)(89)ECC719

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : D.P. Wire Products

Judgement :

1. In this case Commissioner of Central Excise is the appellants. The appeal is directed against the order of the Commissioner (Appeals) of Central Excise, Mumbai-II. The respondents M/s. D.P. Wire Products have filed a cross objection.

2. The respondents viz. M/s. D.P. Wire Products are manufactures of "Wire ropes." Show Cause Notice dtd. 27/07/2001 was served on them demanding duty of Rs. 6,31,356/- in respect of wire ropes which have been allegedly removed from their factory in a clandestine manner by resorting to suppression of production. The notice also proposes imposition of penalty etc. The notice was adjudicated by the Additional Commissioner, who confirmed the demand to the extent of Rs. 6,18,719/- + Additional amount of Rs. 8,473/-. In addition, penalties under Section 11AC and Rule 1732Q etc., were imposed.

3. In the other-in-appeal after going through the evidence on record, it has been held by the Commissioner (Appeals) that out of the total demand of Rs. 6,18,719/-

deserves to be set aside. Accordingly he confirmed the demand for the balance amount. This relief was granted by the Commissioner in the duty demand based on the verification carried out by the officer deputed by him. It was noticed by the Commissioner (Appeals) that in respect of Invoice No. 303 dtd.07/12/1999, as against the quantity of 3000 Meters wire ropes mentioned therein, on actual verification, the quantity of 4500 Meters was noticed. The weight of the reel of the wire ropes mentioned in the lorry receipt showed weight of 3615 Kgs. The Commissioner noticed that if the said weight was taken as a basis, the quantity of wire ropes ought to have been 9474 Meters.

Accordingly, he felt the need to verify the actual weight of the wire rope in respect of equivalent "reel size" of wire rope by deputing an officer to the factory. It was noticed that the weight declared by the manufacturers was acceptable and the weight shown on the Lorry Receipt was incorrect. Based on this finding Commissioner come to the conclusion that demand needs to be scaled down by an amount of Rs. 1,44,428/-. He accordingly did so and the balance amount (Rs. 6,18,719 - Rs. 1,44,427/-) was confirmed. Consequently to this reduction in demand, he also scaled down the penalty and redemption fine. The Commissioner of Central Excise has filed the instant appeal only against the scaling down of duty and fine and other reliefs ordered by the Commissioner (Appeals) and has prayed for setting aside the impugned order (Consequently to the order-in-original would get restored).

4. The respondent, M/s. D.P.Wire Products have filed a cross objection against the Department's grounds of appeal. In the cross objection however, they have also prayed to set aside the order of the Commissioner and hold that there was no clandestine removal. The respondents did not file any appeal against the order-in-appeal, as required under Section 35B(1).

5. Heard both sides. The learned D.R. supports the order passed by the Adjudicating Authority and challenges the relief granted by the Commissioner (Appeals). My attention has been invited to observations of the Commissioner (Appeals) wherein it has been noted that "So far as the appellant's argument that the case has been made on assumption and presumption, it may be stated that

they party is in habit of clandestine removal of case (SIC) without payment of Excise duty. That the goods have been removed without payment of duty, is clear from the case booked against the party by the Excise Officers, where they found the clearances of goods much in excess of the quantity noted on the invoice. That the goods in similar fashion were removed in the past has not been disputed by the appellant. It is only the formulate that has been devised to work out the quantity of wire ropes which is under dispute. As such, the argument advanced by the appellant that the demand is purely based on assumption and presumption is far from truth." 6. It is, therefore, pleaded that despite notice of these serious violations, the Commissioner decided to the extend some leniency towards the appellants in reducing the redemption fine and setting aside the penalty under Rule 173Q etc.

7. The learned counsel appearing for the respondents M/s. D.P. Wire Products, has urged that the cross objection itself may be taken as an appeal against the entire order of the Commissioner (Appeals) and the same may be set aside. He also pleaded that, there is an observation in the order of the Commissioner (Appeals) that the weight recorded in the Lorry receipt are incorrect and therefore, the same cannot be a basis for alleging clandestine removal. It was also pleaded that, the relief of duty to the extent of Rs. 1,44,428/- has been correctly granted by the Commissioner, based on the verification carried out by him by deputing an officer ascertain the correct weight of the reel of wire ropes.

8. I have considered the rival arguments. So far as the first argument of the learned counsel to treat cross objection as an appeal against the entire order is concerned, I find that, there is no merit in the same. The appeal has been filed by the Commissioner of Central Excise, in term of provisions contained in Section 35(B)(2) of the Central Excise Act. Cross objection against such appeal is provided in Section 35 B (4). The challenge in the said appeal filed under Section 35 B (2) by the Commissioner, related or is directed only against the limited portion of the order which grants partial relief to the respondents. A cross objection against the propositions made in such appeals is only for the purposes of affording reasonable opportunity to the respondents against the propositions made by the Revenue in such appeal. The revenue cannot be aggrieved by the portion of the

findings of the Commissioner (Appeal) which are in its favour. No such material is also visible in the Revenue's appeal, The contents of a cross objection are treated as appeal as provided in Section 35B(4) only for the limited purpose of taking them on record as a counter argument against the proposal made in Revenue's appeal. Thus, a cross objection filed under Section 35 B (4) can not be a substitute for an appeal that is required to be filed under Section 35B(1). Had that been so, the law would have clearly provided that once a cross objection is filed, no appeal under Section 35B(1) is required. Therefore, the plea that the cross objection may be treated as an appeal against the entire order is devoid of merit and deserves to be rejected. Hence rejected.

9. So far as the duty relief granted by the Commissioner (Appeal) is concerned, the learned counsel fully supports the finding of the Commissioner (Appeals). The learned D.R. fairly concedes the fact that, since the Commissioner had undertake a factual verification and satisfied himself that, the recording of weight on Lorry Receipt was incorrect, consequential duty reduction ordered by the Commissioner can not be assailed, in the absence of contrary evidence.

10. The D.R. strongly pleaded that keeping in view the extent of reduction in duty demand the relief granted in terms of reduction in redemption fine and setting aside of the penalty under Rule 173Q, are disproportionately on the higher side.

11. After hearing both the sides, I observe that reduction in duty demand occurred to a limited extent while the redemption fine has been scaled down disproportionately. Therefore, there is a case to raise the redemption fine from Rs. 50,000/- to Rs. 1 Lakhs. The other reliefs ordered by the Commissioner (Appeals) do not call for any interference as these are considered adequate to meet the ends of justice.

12. The Revenue's appeal is partly allowed to the extent indicated above and the cross objection is accordingly disposed off.