**Nanhe Mal Export Ltd. Vs. Commissioner of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/32154

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-08-2003

**Reported in** : (2003)(157)ELT481TriDel

**Judge** : S Kang

**Appellant** : Nanhe Mal Export Ltd.

**Respondent** : Commissioner of Central Excise

**Judgement** :
1. Appellants filed these appeals against the order-in-appeal passed by Commissioner (Appeals).

2. Brief facts of the case are that the appellants are engaged in the manufacture of Gutka, the factory premises of appellants were visited by the Revenue authority. On 12-8-97 on verification of their record, it was found that raw material i.e. Katha, 125 Kgs, Supari 1,037 Kgs, Tobacco 125 Kgs were found short. The statement of Shri Amir Chand Jain, Director of the Company was recorded to the effect that out of 1,037 Kgs of Supari, 7,76,620 pouches of Gutka can be manufactured. On the basis of this statement, Central Excise duty of Rs. 1,55,342/- was demanded from the appellants. Further scrutiny of the record on 27-11-95 t6 12-8-97 it was found that the appellants suppressed the production of their final product compared to the raw material i.e.

Supari and on this account duty of Rs. 1,77,211/- was also demanded.

The adjudicating authority confirmed the demand and imposed penalty of equal amount on the appellants and penalty of Rs. 1 lakh only on Shri Amir Chand Jain under Rule 209A. The appellants filed appeal and the same was dismissed.

4. The contention of the appellants in respect of shortage of raw material is that their final product is manufactured out of Supari, Tobacco, Katha, Menthol, Elaichi, Perfumes, Sarbitol, Lime, Magnasium Carbonate and the final product is packed in the laminated pouches and on the lamination, they are availing the benefit of Modvat credit. The shortage is only in respect of Tobacco, Katha and Supari and there is no shortage in respect of the other inputs specifically lamination. The contention of the appellant is relied upon the following decisions :Sunder Silk Mills (P) Ltd. v. C.C.E., Hyderabad - 2003 (153) E.L.T. 176 (T) = 2002 (53) RLT 1046 (CEGAT-Ban.)Ravi Shankar Industries Pvt. Ltd. v. CCE, Tricy - 2002 (150) E.L.T. 1317 (T) = 2002 (53) RLT 467 (CEGAT-Che.)Kartar Steels Ltd. v. CCE, Chandigarh - 2002 (53) RLT 61 (CEGAT-Del.) The contention of the appellant is that in the above decisions the Tribunal held that shortage of some raw material is not sufficient to prove clandestine manufacture and removal of the final product.

5. In respect of the suppression of production, the contention of the appellant is that Revenue only relied upon the total consumption of Supari without giving any benefit in respect of loss of moisture and waste during the cutting of Supari. The contention of the appellant is that they are receiving the Supari and thereafter they are cutting the same into small pieces. After cutting the Supari the supari was heated in an oven to make it brittle. During this process moisture is lost and thereafter, supari was passed through the minute jali to remove the supari dust. This manufacturing losses was not taken into consideration by the adjudicating authority by calculating the quantity of their final product. The contention of the appellant is also that now they are separately keeping the record on such manufacturing losses and the Revenue is accepting the same.

6. The contention of the Revenue is that the quantity of the final product was calculated as per the statement made by Shri Amir Chand Jain. Therefore, now the appellants cannot say that there was a loss in the weight of the supari due to moisture loss and due to the removal of dust.

7. In this case the duty of Rs. 1,55,324/- was confirmed on the ground that there was shortage of some of the raw material. It is admitted facts that appellants also used other inputs along with inputs found short in the manufacture of the final product and in respect of lamination which is used in the packing. The appellants also availing the benefit of Modvat credit and there is no shortage of lamination and other inputs. In the decisions relied upon by the appellants, the Tribunal held that shortage of some raw material is not sufficient to prove that the clandestine manufacture and removal of their final product in the absence of evidence to show that the inputs found short are used in the manufacture of their final product which were removed without payment of duty. In these circumstances, I find that this demand is not sustainable, hence set aside.

8. In respect of the allegation, that appellants had suppressed their final product in reply to show cause notice, the appellants had a specific stand that due to moisture loss and due to removal of dust, the weight of supari which they are receiving cannot be made basis for calculating their final product. The adjudicating authority rejected this contention only on the ground that this was not explained by their Director at the time of visit of the Excise officers. The Commissioner (Appeals) also rejected this contention in view of the statement made by their Director. The Revenue had not rebutted the contention of the appellants in respect of loss of weight in the supari due to heating and due to removal of dust arising out of cutting of supari. When a specific plea in respect of the factual aspect is raised by the assessee, then the Revenue authority can reject the same if it is not according to the factual position, in the present case, the plea regarding loss of weight in respect of Supari is not rebutted by the Revenue. Therefore, the demand in respect of suppression of production is also not sustainable. The impugned order is set aside and the appeals are allowed.