Cce Vs. Mahavir Ispat

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Sep-10-2003

Reported in : (2003)(111)LC700Tri(Bang.)alore

Judge : G B Deva

Appellant : Cce

Respondent : Mahavir Ispat

Judgement :

2. The issue relates to clandestine removal. According to the Department, excess quantity of 17.410 MTs of M.S. Ingots was not properly accounted. On going through the facts and circumstances of the case, I find that the point at issue has been properly analysed by the Commissioner (Appeals) at Para 7 of the impugned order. The relevant Para 7 is as under- 7. I am inclined to accept the various pleas advanced by the appellants. In terms of the case law cited at Sl. No. (i) above, it has been held that the difference between RG 1 balance and physical stock incomplete or improper maintenance of prescribed record alone not sufficient proof of clandestine removal direct physical evidence required or sufficient circumstantial evidence to show clandestine removal - Rules 9 and 53 of Central Excise Rules, 1944. As per case law cited at Sl. No. (ii) above, it has been held that allegation of clandestine removal should be established by facts and not on presumption - Rule 9 of Central Excise Rule, 1944 and Section 11A of Central Excise and Salt Act, 1944. Confiscation cannot be made when there is no adequate evidence of clandestine removal of goods - Section 33 of Central Excise

& Salt Act, 1944. As per the case law cited at Section No. (iii) above, it has been held that confiscation of goods still within the factory premises and not attempted to clandestinely remove the same confiscation not to be sustained - power of confiscation under Rule 173Q of Central Excise Rules, 1944 did not extend to goods which were still in the factory and which had not reached the stage of removal. It is an undisputed fact that the goods were lying within the factory premises and no attempt was, till then, made to clandestinely remove the same. Therefore, the order of confiscation cannot be sustained. 1979 ELT 402 (AP) relied on. As per the case law cited at Sl. No. (iv) above, it has been held that demand clandestine removal - quantification of duty based purely on averages - specific evidence as to manufacture of goods and clearance without payment of duty not produced - benefit of doubt given to appellants in respect of 387.910 MTs of Ms Ingots - Demand set aside Section 11A of Central Excise & Salt Act, 1944. In the case before me, I find that the Department has not contended that there was an attempt to clandestinely remove 17.410 MTs Ingots found in excess in the factory premises. Similarly, the Department has not been able to produce any direct physical or circumstantial evidence that 20 MTs of Ms Ingots which were supposedly manufactured out of 24.100 MTs of scrap found short were cleared without payment of duty. I am inclined to accept the appellants contention that the scrap found short was used in the manufacture of 17.410 MTs of Ingots found in excess. If there was an intention to remove the Ingots found in excess, the same would not have been lying in the factory premises since 15.11.1994 till 22.11.1994, when the officers visited the factory. It is also to be noted that there was not weigh bridge a available to weigh the finished product and hence the finished products were being weighed outside the factory at the time of their clearance for which the appellants had already obtained the permission of the Assistant Commissioner. Thus, the appellants were accounting for the finished products in the RG1 Register at the time of clearance and that is why RG1 Register was written up to 15.11.1994 only. Therefore, confiscation of 17.410 Mt of M.S. Ingots in question and imposition of redemption fine is not tenable in view of the case law cited at Serial No. (iii) above. The same is set aside.

The Commissioner (Appeal) has given a categorical finding that the Department has not contended that there was an attempt to clandestinely remove 17.410 MTs of MS Ingots found in excess in the factory premises.

Similarly, the Department has not been able to produce any direct physical or circumstantial evidence that 20 MTs of MS Ingots which were supposedly manufactured out of 24.100 MTs scrap found short were cleared without payment of duty.

3. Shri B.R. Jagdeesh, JDR for Revenue justified the action of the Department for imposing redemption fine and levy. He said that the goods manufactured were not accounted for properly and they were meant for clandestine removed without payment of duty. He also relied upon the following decisions of the Tribunal-Krishna Capacitors (P) Ltd. v. CCE 4. I have carefully considered the submissions made by both sides. Time and again, the Tribunal has been taking the view that burden lies on the Department to prove that there was an attempt to clandestine removal of goods found in excess in the factory premises with an intention to evade payment of duty. No evidence has been placed on record to substantiate that there was an attempt to evade payment of duty. Since the point at issue has been properly analysed by the Commissioner (Appeals), I do not find any substance in the appeal filed by the Revenue. In the result the appeal in dismissed.