

**Cce Vs. H.S. Indus Co.**

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**SooperKanoon Citation :** [sooperkanoon.com/32639](http://sooperkanoon.com/32639)

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

**Decided On :** Oct-13-2003

**Reported in :** (2004)(92)ECC519

**Judge :** P Bajaj

**Appellant :** Cce

**Respondent :** H.S. Indus Co.

**Judgement :**

1. This appeal has been filed by the Revenue against the impugned order-in-appeal vide which the Commissioner (Appeals) has modified the order-in-original by setting aside the confiscation of the seized unaccounted goods and the redemption fine imposed for the redemption of those goods by the adjudicating authority.

2. None has come present on behalf of the respondents in spite of issuance of notice to them for today's hearing. No request for adjournment has been also from them. Therefore, I proceed to decide the appeal on merits after hearing the learned SDR.3. The perusal of the record shows that non-accountal of the finished goods had not been contested by the respondents. The non-accounted goods found were 5,803 MT of HBB of Wire while taking physical verification of the finished goods. The plea taken by the respondents before the adjudicating authority was that the goods were still lying in the factory and there was no attempt on their part to remove the same in a clandestine manner. The adjudicating

authority did not accept the same and ordered the confiscation of the goods and imposed the redemption fine, besides personal penalty of Rs. 10,000/- on the respondents.

4. However, the Commissioner (Appeals) by following the ratio of the law laid down in the case of Bhillai Conductors (P) Ltd. vs CCE, Raipur, 2000 (125) ELT 178 (T), which had been followed in the case of Nestle India Ltd. vs CCE, Goa 2001 (137) ELT 1289, wherein it has been observed that in the absence of mens rea, the provisions of Rule 173-Q could not be invoked in a case of non-accountal of the goods, had set aside the confiscation and redemption fine, and also reduced the penalty to Rs. 5,000/- 5. But the impugned order on the face of it cannot be sustained as held commissioner (appeals) had failed to take notice of the law laid down by the Bombay High Court in the case of Kirloskar Borthers vs UOI 1988 (34) ELT 30 (Bom), wherein it has been ruled that in a case of non-accountal of the goods even in the absence of means rea to remove those goods in a clandestine manner by the assessee, the provisions of Rule 173-Q(1)(b) can be invoked. It is well settled that the judgment rendered by the Hon'ble High Court has to take precedence over the judgment of the Tribunal. Therefore, in the face of this judgment of the Tribunal. Therefore, in the face of this judgment of the Hon'ble Bombay High Court, the ratio of the law laid down in the case of Bhillai Conductors (P) Ltd. supra, could not be given preference by the learned Commissioner (Appeals). Therefore, the impugned order of the Commissioner (appeals) is set aside and that of the adjudicating authority is restored. The appeal of the Revenue accordingly stands accepted.

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