

Dhillon Kool Drinks and Beverages Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-17-2003

Reported in : (2004)(169)ELT299TriDel

Judge : A T V.K., P Chacko

Appellant : Dhillon Kool Drinks and Beverages

Respondent : C.C.E.

Judgement :

1. In this appeal, M/s. Dhillon Kool Drinks & Beverages Ltd., are challenging the penalty imposed on them and the redemption fine demanded from them.

2. Shri Deepak Rai Walia, Executive Director of the appellants, submitted that they manufacture aerated water; that their facility of depositing duty on fortnightly basis was forfeited by the Deputy Commissioner under Order dated 18.7.2000 for a period of two months as they had defaulted in making full payment of duty during April to July, 2000; that during the period, the facility of fortnight payment was suspended; that they had made payment of duty partly from PLA and partly from CENVAT Credit Account; that the Central Excise Officers searched their depot at Chandigarh and seized the goods; the subsequently, the Joint Commissioner under order-in-original no.

42/2002 dated 30.9.02, confisted the good seized from their depot with an option to redeem the same on payment of a fine of Rs. one lakh and imposed a penalty

of Rs. 4 lakh; that their appeal has been rejected by the Commissioner (Appeals) also. He, further, submitted that they had utilised the CENVAT Credit during the restricted period due to ignorance; that there was no malafide intention in making the payment of duty by utilising the CENVAT Credit; that their intention is quite clear from the fact that they debited the whole amount of duty along with interest as soon as the Department brought to their notice that the CENVAT Credit could not be utilised during the period fortnight facility is forfeited. He, finally, submitted that once they had deposited the entire amount of duty, they were entitled to get the amount credited in their CENVAT Credit Account immediately, but the same was allowed by the Department after two and half months, during which period, they also lost the benefit of the said credit. Finally, he submitted that both the amount of penalty and R.L. were on very high side.

3. We heard Shri Vikas Kumar, learned S.D.R., who submitted that as per the provisions of Central Excise Rules, the appellants are debarred from utilising the CENVAT towards payment of duty during the period the facility of fortnightly payment of duty is forfeited; that they have made the payment of duty through CENVAT Credit account; that the goods, cleared by them, are deemed to be cleared without payment of duty and accordingly such goods are liable for confiscation and they are liable to penal action.

4. We have considered the submissions of both the sides. Rule 173G (1) of Central Excise Rules, 1944, clearly provided that during the period the facility to make payment of duty on fortnightly basis is forfeited, the manufacturer is required to pay excise duty for each consignment by debiting to the account current and in the event of any such failure, it will be deemed as if such goods have been cleared without payment of duty. We, therefore, agree with the learned S.D.R. that the penalty is imposable on the appellants as they paid the duty during the material period through CENVAT Credit account. The goods also are liable for confiscations these are deemed to have been cleared without payment of duty. However, taking into consideration the facts that the entire amount of duty has been paid along with interest as soon as the appellants were directed to make payment of duty in cash, we, reduce the penalty to Rs. 10,000/-. We also reduce the redemption fine to Rs. 10,000/-. The appeal is disposed of in these terms.

(Pronounced in Court) (DISCLAIMER: Though all efforts have been made to reproduce the order correctly but the access and circulation is subject to the condition that Taxindiaonline is not responsible/liable for any loss or damage caused to anyone due to any mistake/error.)

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