

Cce Vs. Siva PectIn Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-17-2003

Reported in : (2004)(94)ECC62

Judge : R K Jeet

Appellant : Cce

Respondent : Siva PectIn Ltd.

Judgement :

1. This appeal is filed by the Revenue against the Order-in-Appeal No.173/2000 (M-III) dated 26.12.2000 by which the Commissioner has remanded the matter to the lower original authority for re-calculation of the duty. He has also held that there was no suppression of fact on the part of the assessee and accordingly he has set aside the mandatory penalty imposed under Section 11AC and also interest under Section 11AB of the CE Act. He has also reduced the penalty under Rule 173Q to Rs. 10,000.

2. Brief facts of the case are that the assessee-respondents are engaged in the manufacture of Pectin and extracts from the lime peel, used as a preservative in the manufacture of Jelly and Jams and these items were dutiable till 1994-95. The goods fall under tariff sub-heading No. 1301.10. The goods became non-dutiable in terms of Finance Bill 1995 and the same position continued till 1996-97.

However, by Finance Bill 1997, levy of Central Excise duty on the goods was re-introduced. The assessee had obtained necessary licence and cleared the goods viz. Pectin on payment of appropriate duty till 1994-95. The officers of the Preventive on scrutiny of the invoices raised by the assessee noticed on 27.1.98 that the assessee had effected clearance of the goods to the tune of Rs. 10,57,000 over and above the exemption limit of Rs. 50 lakhs as per Notification No. 8/98 dated 2.6.98 during the financial year (up to 15.12.98) without payment of duty. Accordingly show cause notice was issued to the assessee which culminated in the order of adjudication by the Original authority by which he has demanded duty of Rs. 52,850 under Section 11A of the CE Act, 1944 and appropriate the said sum from the amount already paid by the assessee. He has also imposed mandatory penalty of equal amount under Section 11AC and also demanded interest under Section 11AB of the Act. Penalty of Rs. 25,000 under Rule 173Q was also imposed. Aggrieved by the said order the assessee filed appeal before the Commissioner (Appeals), who has partially allowed the appeal as indicated above. It is against the said order of the Commissioner (Appeals), the Revenue has come in appeal.

3. Shri C. Mani, learned JDR appearing on behalf of the Revenue reiterated the grounds of appeal and submitted that the assessee even after exceeding the limit of Rs. 50.00 lakhs were clearing the goods without payment of duty without the knowledge of the department and hence they have suppressed the facts from the department. The contention of the assessee that they were under the bona fide belief that the goods were continued to be non-dutiable in terms of Finance Bill 1995 is not acceptable and in case of any doubt, they could have sought for clarification from the department. In the circumstances the order of the Commissioner (Appeals) modifying the Order-in-Original is not and proper and he prayed for allowing the appeal.

4. Shri J. Sankararaman, learned Counsel appearing on behalf of the assessee-respondents submitted that the goods were non-dutiable for the period from 1994-95 to 1996-97 and the goods became dutiable in terms of the Finance Bill 1997. The assessee had paid the duty voluntarily vide TR 6 Challan 1 & 2 dated 17.2.98 being the duty for the clearances effected over and above the exemption limit.

Under the circumstances it cannot be said that the assessee had deliberately suppressed any facts from the Department and hence the Commissioner (Appeals) has correctly come to a conclusion that there was no suppression of fact on the part of the assessee-respondents. Under the circumstances he prayed for dismissal of the Revenue appeal.

5. I have considered the submissions made by both the sides and gone through the case records. In this case the assessee had taken out Central Excise licence for the manufacture of the goods and cleared the goods on payment of duty till 1994-95. It was from 1994-95 that the goods viz. Pectin became non-dutiable and this position continued up to 1996-97 and the assessee continued to retain the Central Excise licence. The duty was re-introduced on the goods vide Finance Bill 1997. The assessee have taken the stand that they were not aware of the re-introduction of duty on the goods during the period 1997-98. I find that the original authority in Order-in-original has noted that the assessee had voluntarily paid the duty of Rs. 52,850 being the duty involved on the clearances effected over and above the exemption limit vide TR 6 Challan 1 & 2 dated 17.2.1998 i.e. much before the issue of the show cause notice No. 57/99 dated 22.7.99. The assessee has not challenged the dutiability of the goods and their plea is that it cannot be demanded beyond the period of six months and the quantum has to be requantified. They have also taken the stand that there was no suppression of fact on their part. In the backdrop of the case, it cannot be said that there was mala fide intention on the part of the assessee to evade payment of duty. Therefore, the finding arrived at by the lower appellate authority that the assesseees were clearing the goods by raising invoices even after the rate of duty became nil on the goods, and hence the bona fide belief on the part of the assessee that the goods were non-dutiable, cannot be found fault with and accordingly the allegation of suppression fails as rightly held by the lower appellate authority and the extended period not be invoked against the assessee. Consequently mandatory penalty equal to duty, cannot be demanded and so also interest under Section 11AB. In view of the above discussion, I am of the considered opinion that the impugned order is a well reasoned one and appeal of the Revenue is devoid of merits.

Accordingly, I uphold the impugned order and dismiss the Revenue appeal.
Ordered accordingly.

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