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**Metadust (ind) Ltd. Vs. Commissioner of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/33318

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

**Decided On :** Dec-05-2003

**Reported in** : (2004)(167)ELT67Tri(Mum.)bai

**Judge** : S T S.S.

**Appellant** : Metadust (ind) Ltd.

**Respondent** : Commissioner of Central Excise

**Judgement** :

1. Issue in this appeal, on facts as admitted by both sides and the Commissioner Appeals, is whether goods received and manufactured on job work basis were required to be entered in RG1 and :if they are not so entered confiscation liability would arise even if goods are found in the factory premises and penalties would be called for in not having followed the procedure of receipt of Modavt inputs on challans for job work and the accounting thereafter as per Rule 57F(2).

2. Appeal pertains to the period 1999, when on 16.12.1993 the officers visited the factory they found certain excisable goods in the factory which were not accounted. The Manager admitted to the said facts while the General Manager in April 1994 claimed the goods to be receipts and job work done for another manufacturer from whom Modvated Inputs were receive. The Commissioner (Appeals) after coming to a finding the unaccounted Zinc Dust should be confiscated and redeemed on a fine of Rs. 1,06,000/- under the provisions of Rule 173Q(1) and a penalty of Rs. 50,000/- was imposed along with demands of duty

on the said Zinc Dust.

3. The CCE (Appeals) had concluded that the goods under seizure (the Zinc Ash) were the goods received for job work and the same should have been informed n 16.03.1993 and the absence of Excise Clerk for not entering in RG1 was not upheld as a reason and goods were not labeled therefore they were not goods on job work. The conclusion of the explanation that goods were not for the same and the SCN itself recognizes such challans and registers to be existing. The goods however were required to be entered as production in RG1 records since the appellants are also manufacturer of same products on their own account. At the time of clearance suitable entry reference of challans on which they move back could be maintained. The appellants in having not obtained 57F(2) permission and not following the procedure are liable for a penalty, however confiscation cannot be upheld for the reasons that Commissioner in his order relies upon the statement of labeling to be the last step after the packing of drums, etc and the subject goods in not having been labeled could be considered as goods, yet not ripe for entry as fully manufactured goods they need not have been entered as fully finalised excisable goods but never taken were required to be entered as goods in furnishing the same since it is nobody's case that the said goods were production of that very day.

However, confiscation of such goods found in factory premises and not entered in RG1 is not called for being bound and relying upon catena of decisions (See Bhillia Conductors (P) Ltd. 2000 (125) ELT 781). The orders of confiscation are set aside.

4. Since confiscation is set aside, the appellants should enter the goods in RG1 and clear the same at the appropriate rate of duty, as applicable to job work goods on return to the supplier.

5. The penalty imposed is redeemed to Rs. 10,000/- from Rs. 50,000/-as imposed keeping in mind the facts and circumstances of the case.

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