Cce Vs. Ratlam Wires Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-03-2004

Reported in : (2004)(92)ECC634

Judge : P Bajaj

Appellant : Cce

Respondent : Ratlam Wires Pvt. Ltd.

Judgement :

1. In this appeal, the Revenue has questioned the validity of the impugned Order-in-Appeal vide which the Commissioner (Appeals) has reversed the Order-in-Original and set aside the duty and penalty besides allowing modvat credit, as confirmed on them by the adjudicating authority.

2. None has come present on behalf of the respondents, They have sent a letter intimating that their consultant had fallen ill and the appeal may either be adjourned or decided after taking into account their cross-objections and case law referred therein. Therefore, I proceed to decide the appeal after hearing the learned SDR and going through the cross-objections of the respondents.

On 22.8.1997 the Preventive Staff of the Central Excise, Indore, paid a surprise visit to the factory of the respondents. They checked the record as well as conducted physical verification of the stock of the finished goods and inputs lying in the factory. On physical verification, the shortage of finished goods (Iron or non alloy steel wires) of the value of Rs. 10,48,874 involving excise duty of Rs. 1,57,330 and inputs (630.440 kgs. of zinc) involving duty of Rs. 6,856 were found short. This shortage was admitted by Shri Madanlal Kataria, Director of the respondents' company after expressing his satisfaction with the verification of the goods and also wished to waive issuance of show cause notice and undertook to pay the duty. But, later on, he changed his mind and on 26.8.1997 through a letter requested for the issuance of the show cause notice. Accordingly, show cause notice was issued vide which duty on the finished goods found short was demanded and recovery of the modvat credit amount taken on the inputs found short, was also sought. The penalties were also proposed in that notice. The respondents, however, contested the correctness of the notice by alleging that the shortage was imaginary, based on presumptions and assumptions, and that no weighment of the stock was made. The adjudicating authority after rejecting the plea of the respondents, confirmed the duty demand as well as the recovery of modvat credit amount and also imposed penalties as detailed in the Order-in-Original. The Commissioner (Appeals) has reversed that order through the impugned order.

4. The learned JDR has contended that the learned Commissioner (Appeals) has not taken into account the confessional statement of the Director of the respondents' company and wrongly set aside the Order-in-original by holding that clandestine removal of the finished goods was not proved and that proper method was not adopted for ascertaining the shortage of the finished goods as well as the inputs.

Therefore, the impugned order deserves to be set aside.

5. On the other hand in the cross-objections, the respondents have alleged that correct procedure for ascertaining the shortage of finished goods was not adopted by the officials and even actual weighment of the stock was not done and as such the Commissioner (Appeals) has rightly reversed the Order-in-Original. They have also relied upon the ratio of the law laid down in the case of K.L. Steel Ltd. v. CCE, Meerut,Debar Steel Re Rolling v. CCE, Raipur,Prestige Metals (P) Ltd., Indore v.CCE, Indore, Final Order No. A/298/NB(S) dated 20.7.1997, to contend that

without the actual weighment of the goods, no shortage could be presumed and that the admission of their Director was not enough to prove the same.

6. I have gone through the record. So far as the visit of the Central Excise Officers to the factory premises of the respondents on 22.8.1997 is concerned, the same has not been disputed by them. It has also not been disputed by them that those officers did check the record of the respondents lying in the factory. The verification of the finished goods and the inputs was also made by them and as a result thereof, shortage of the finished goods as well as of inputs was detected by them, as detailed above. Shri Madanlal Kataria, Director of the respondents' company on that very date in his statement admitted the correctness of the shortage of the final product and the inputs as pointed out by the Central Excise Officers. He even undertook to pay the duty in respect thereof and went to the extent of requesting the waiver of the issuance of the show cause notice, to the respondents.

This statement was never retracted by him at any stage during investigation or at the stage of adjudication before any officer on the ground of having been obtained from him under coercion or threat. He never also at any stage disputed the correctness of the procedure adopted by the officers for arriving at the shortage of the finished goods and the inputs. Even in his letter dated 26.8.1997 through which he requested that show cause notice should be issued, he never alleged that the shortage of the goods was not correctly arrived at by the officers. He never in that letter even asked for the re-verification of the stock by actual weighment. Therefore, the plea of the respondents in the reply to the show cause notice that proper procedure was not adopted by the officers and that the shortage was based' on presumptions and assumptions, can safely be said to be afterthought, especially when their Director, Shri Madanlal Kataria, had never retracted his statement made by him on the very day of checking vide which he expressed his satisfaction over the mode for physical verification of the goods adopted by the officers. He rather admitted the shortage of the finished goods and inputs and undertook to pay the duty. If he had any doubt in his mind at that time, he could ask for the rechecking/verification of the goods by actual weighment. But he did not do so. His admission is binding on his company, the respondents, and is enough under the law to saddle the respondents when the duty liability; for the finished goods found short and for the recovery of the modvat credit availed on the inputs found short, under the law.

7. The observation of the Commissioner (Appeals) that independently the Department was required to carry out the weighment of the goods for ascertaining the actual shortage and clandestine removal of the goods was also required to be proved, cannot be legally sustained. He has lost sight of the fact that under the law the maker is bound by his admission and that admission is enough to substantiate the charge against him, unless he is able to prove that the admission made by him was factually and legally incorrect. Shri Madanlal Khataria, Director of the respondents company, never retracted his admission which he made through his statement dated 22.8.1997. In face of his admission on the very day of checking, the company cannot be heard saying that the shortage was based on presumptions and assumptions when the physical verification was conducted in the presence of their Director who accepted the correctness of the same. It was not essential to prove the actual clandestine removal of the goods by the respondents from the factory premises for raising the duty demand. The fact that the finished goods were found short as per the admission of their Director, the respondents are liable to pay the duty in respect of the same.

Similarly, they are also liable to pay back the credit taken by them on the inputs which were found short in their factory. The ratio of the law laid down in the above referred cases, cited by the respondents in their cross-objections, is not attracted to the facts of the present case. In the case of Kirloskar Brothers, supra, the appellants therein insisted on the weighment of the entire lot at the time of subsequent search and also disputed the procedure adopted by the Department. It was under these circumstances, the alleged admission of their representative was held to be not sufficient for proving the shortage of the goods. In the second case of Dhebar Steel Re-rollers v. CCE, Raipur, supra, the Department did not produce the evidence to prove the excess and shortage based on actual weighment, as against mere estimated weight pleaded by the assessee and for that reason the demand was set aside. Similarly, in the third case of M/s Prestige Metals P.Ltd., supra, there was no clear cut admission of the Manager of the appellants therein regarding shortage. But the facts and circumstances in the case in hand are quite different, as detailed above. The respondents cannot be permitted to wriggle out of the admission made by their Director on the date of checking regarding the shortages of the goods which he made when the physical verification of the goods was carried out by the officers.

8. In view of the discussion made above, in my view, the respondents are liable to pay the duty on the finished goods found short and also debit the modvat credit taken by them on the inputs found short, under the law and as such the impugned order of the Commissioner (Appeals) cannot be legally sustained and the same is set aside. The Order-in-Original of the adjudicating authority is therefore maintained. The cross-objections of the respondents are dismissed