Essel Propack Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-07-2004

Reported in : (2004)(167)ELT220Tri(Mum.)bai

Judge : P Chacko, A M Moheb

Appellant : Essel Propack Limited

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants in these appeals are manufacturers of excisable goods falling under Chapter 39 of the C.E.T.A. Schedule. During the period July, 2000 to March 2001, they had adopted the cost construction method of valuation of the goods, for the purpose of payment of Central Excise duty. One of the elements included in the assessable value of the goods was notional profit, which was taken as 6.06% of the cost of production instead of 15% provided under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4(1)(b) of the Central Excise Act. Duty was accordingly paid on the goods cleared for captive consumption either in the same unit or to their sister units. The department detected the above undervaluation and raised demand of the differential amount of duty. They also proposed to impose a penalty on the party. The demand of duty and the proposal for penalty were contested. The original authority confirmed the demand of duty against the assessee and imposed on them a penalty under Rule 173Q of the Central Excise Rules, 1944. The party preferred appeal to the Commissioner (Appeals). However, before the appellate

authority, they did not contest duty liability. Their challenge was only in respect of the penalty. The Commissioner (Appeals) did not sustain the challenge. Hence these appeals before us.

2. Heard both sides. The Chartered Accountant representing the appellants submitted that any penalty could not be sustained on the basis of the finding recorded by the lower appellate authority. No mens rea was found against the appellants by the Commissioner (Appeals) and, therefore, it was not proper on his part to sustain the penalties imposed by the original authority. Reliance was placed on decisions of the Supreme Court and the Tribunal as under :-P & B Pharmaceutical Pvt. Ltd. v. C.C.E. - 2003 (153) E.L.T. 14 (S.C.).

(2) Indian Petrochemicals Corporation Ltd. v. C.C.E. - 2003 (58) R.L.T. 132.

4. We have carefully examined the submissions. It has been submitted on behalf of the appellants that any allegation of suppression of facts, mis-statement of facts, fraud, etc., had not been raised against the party in the show cause notices issued to them by the department. This submission has not been contested before us. A perusal of the impugned order shows that the appellants had paid the differential duty soon after they realised their mistake of taking 6.06% of cost of production as notional profit instead of 15% effective from 1-7-2000, for inclusion in the assessable value of the goods. The only finding recorded by the Commissioner (Appeals) with regard to the delayed payment of differential duty is that the party wanted to use government money to their advantage with mala fide intention. We find that this finding of the Commissioner (Appeals) is clearly beyond the scope of the show cause notices, wherein there was no allegation of mala fides against the party. Hence, the very foundation set up by the lower appellate authority for sustaining the penalty imposed on the party by the original authority turns out to be factually and legally unfounded.

Therefore, we are unable to uphold the decision of the lower appellate authority. We set aside the impugned order and allow these appeals.