Ujala Dyeing and Printing Mills Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-09-2004

Reported in : (2005)(191)ELT493Tri(Mum.)bai

Judge : P Chacko, A M Moheb

Appellant : Ujala Dyeing and Printing Mills

Respondent : Cce

Judgement :

1. After examining the records and hearing both sides, we think, the appeal itself can be disposed of finally at this stage. Accordingly, after dispensing with the requirement of pre-deposit, we take up the appeal.

2. Officers of Central Excise found, on inspection of the appellants' factory, that a certain quantity of excisable goods had not been entered in RG-I. On this basis, a demand of duty was raised on them and a penalty was also proposed to be imposed on them. The original authority imposed a penalty of Rs. 50,000/- on the party under Rule 173Q, after noting that the amount of duty (Rs. 78,324/-) on the above quantity of goods had already been paid by them. The first appellate authority upheld that decision. In the present appeal, the challenge is only against the penalty.

3. Ld. Consultant for the appellants submits that the goods in question were about to be accounted in RG 1 when the officers visited the factory and that there was no

intent not to do so, nor to evade payment of duty on the goods. Ld. DR reiterates the findings of the Commissioner (Appeals). On a careful consideration of the submissions, we are of the view that a penalty as high as Rs. 50,000/- on the ground of non-accountal of goods is certainly not sustainable under Rule 173Q (1), there being no evidence of intentional non-accountal of goods in this case, though the lower appellate authority has recorded finding to the effect that the non-accountal was wilful. We note that the duty amount involved is only about Rs. 78,000/- which was paid forthwith. It has been consistently held by the Tribunal that, in the absence of mens rea, unconscionably high penalties cannot be imposed on any assessee.

We are of the view that, in the aforesaid facts and circumstances of this case, a penalty of Rs. 5,000/- (Rupees Five thousand only) will match the offence of non-accountal found against the party. The impugned order will stand modified to this effect. The appeal is disposed of accordingly.