Commissioner of Central Excise Vs. HemaIn Intermediates P. Ltd.

Commissioner of Central Excise Vs. HemaIn Intermediates P. Ltd.

SooperKanoon Citation : sooperkanoon.com/33780

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-13-2004

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : HemaIn Intermediates P. Ltd.

Judgement :
1. The revenue has filed the instant appeal against the order-in-appeal passed by the learned Commissioner.

The respondents received inputs on 15/06/1998 from M/s Arti Inds.

Ltd. on payment of duty in tanker of M/s Sai Krupa Transport Services. Credit was taken on receipt of inputs and thereafter the inputs were removed from the respondents factory to the factory of M/s Mohan Polyfab Ltd. Ankaleshwar, under a commercial invoice and delivery challans both dt.15/06/1998, which bare an endorsement, "material transit as per purchase from M/s Arti Inds. Ltd. vide Invoice No. 545 dt. 15/6/98. Since the truck was intercepted at Ankaleshwar and enquiries on 16/6/98 revealed that the time of removal of goods at 0800 hrs. on 16/6/98 under invoice No. 1 dt.16/6/98 which was debited in RG 23 Pt.II vide E.No.208/ dt.16/6/98, the inputs were seized, adjudication followed after due show cause notice and the Assistant Commissioner confiscated the contents of the tanker with an option for redemption fine of Rs. 25,000/-. Penalty of Rs. 64,394/- was also imposed on the respondents under Rule 571 and Rs. 5000/- on authorized signatory of the respondents. The tanker was confiscated and allowed to be redeemed on payment of fine of Rs. 15000/-. The learned Commissioner (Appeals) modified the above order by reducing the penalty on Shri Joshi the authorized person from Rs. 5000 to Rs. 1000/- while rest of the order was set aside.

2. The revenue are in appeal against the order-in-appeal. In the grounds of appeal it. is pleaded that:- In terms of provisions of Rule 173Q (1) (d), in case of contravention of any of the provisions of these rules, all such goods shall be liable to penalty. This was a case of evasion of duty, hence mandatory penalty under Rule 57U read with Section 11 AC was called for.

3. The Commissioner (Appeals) did consider it to be a case of removal of goods without payment of duty. He held that this non payment would not have remained on record for long since the consignee was also a manufacturer and he would have insisted for duty paying document.

The Commissioner (Appeals) is holding the view that though the consignment was removed on 15/6/98 and till payment of duty on 16/6/98, the said removal was a removal without payment of duty, he counters the Department's contention that the non payment could not have remained unrectified, as the consignee being a manufacturer, would have insisted on duty paying document.

5. I note that, whether or not the irregularity could have remained undetected is not the point. It is an admitted position that, the seized goods were liable to payment of central excise duty and the said duty was paid only after the tanker was intercepted. In fact, the respondents have tried to even cover up the illicit removal by claiming that the goods had moved outside their factory on 16/6/98 i.e. the date of duty payment and not on the previous day. This clearly shows that their intention to evade existed and only when the attempt failed, a cover up was attempted. IN the circumstances imposition of mandatory penalty was justified.

Accordingly, I hold that the penalty of Rs. 64,394/- imposed by the adjudicating authority on the respondents was justified and to that extent the impugned order is required to be modified. In the facts and circumstances of the case remaining findings in the impugned order-in-appeal do not call for any interference and are maintained.

Revenue appeal is partly allowed to the extent above.