D.D. Industries Ltd. Vs. Commissioner of Central Excise

D.D. Industries Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/33844

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-19-2004

Reported in : (2004)(97)ECC304

Judge : S Kang, a T V.K.

Appellant : D.D. Industries Ltd.

Respondent : Commissioner of Central Excise

Judgement :
1. M/s. D.D Industries Ltd. have filed this Appeal against Order-in-Appeal No. 666/2002 dated 18.12.2002 by which the Commissioner (Appeals) has confirmed the confiscation of goods seized from them, demand of duty and penalty.

2. Shri R.P. Singh, learned Consultant, mentioned that the appellants manufacture Motor vehicle parts and avail of Modvat Credit of the duty paid on inputs; that the Central Excise Officers visited their unit on 4.12.93 and found that RG 1 register was written upto 30.11.93, finished goods valued at Rs. 80,234.22 were found in excess of the stock entered in RG I and the goods valued at Rs. 4,87,801 removed under GPI Nos. 838 to 845 from 1.12.93 to 3.12.93 was not recorded in RG I register. He submitted that production for 1.12.93 to 3.12.93 was recorded in production slips which were resumed by the Central Excise officers; that taking into account the production recorded in production slips and clearances made by them, there was neither any excess nor any shortage; that the Joint Commissioner in Order-in-Original has given a specific finding that "if one were to take the

quantity mentioned in the GP 1s and production slips into consideration then there is no shortage or excess of goods,"; that in view of such a finding, the seized goods are not liable for confiscation; that the production could not be entered in RG I register on account of the concerned clerk being sick; that simple omission to make entries for three days in RG I does not justify confiscation or penalty. He relied upon the decision in the case of Lakshmi Polypacks (P) Ltd. v. CCE, Hyderabad 1, 2003 (86) ECC 631 (CEGAT): 2003 (56) RLT 64 (CEGAT) wherein it has been held that unaccounted goods lying in factory and there being no attempt to remove the same clandestinely, confiscation and fine is not to (sic, to be) resorted to.

3. The learned Consultant also mentioned that the Appellants had sent inputs valued at Rs. 64,31,605 for job work under Rule 57F of the Central Excise Rules; that the duty has been confirmed on the ground that the inputs were not received back within 60 days. He submitted that most of the goods were received back within 60 days and they had produced the evidence during hearing before the Adjudicating Authority; that in any case the fact remains that the goods were received back and used in the manufacture of the final goods. He also contended that the provision regarding reversal of credit equal to 10% of the amount of duty on inputs were introduced in the Central Excise Rules with effect from 1.3.1997 under Notification No. 6/97 CE(NT) dated 1.3.97 whereas the inputs were sent by them in 1993. He relied upon the decision in the case of Asia Brown Boveri Ltd. v. CCE, Calcutta I, 2000 (41) RLT 325 (CEGAT) wherein it has been held that there is condition in Rule 57 F (3) at the relevant time providing for return of inputs within 60 days and it cannot, therefore, be alleged that the appellants had contravened the provisions of Rule 57 F "so as to deny them the benefit of Modvat credit. The Circulars and Trade Notices are issued for the conveniences of the Administration and cannot be said to have formed the condition in the provisions of the relevant Rules." Reliance has also been placed on the decision in the case of UP Twiga Fibre Glass Ltd. v. CCE, Meerut, 1999 (64) ECC 607 (Tri): 1999 (32) RLT 721 (CEGAT) wherein it has been held that the Rule 57F or Rule 57 I contains no provision that Modvat Credit will be liable to recovery if the inputs in question did not return to the manufacturer within the period of sixty days or during the extended period....." 4. Countering the arguments Shri Kumar Santosh, learned

Senior Departmental Representative, submitted that it has not been disputed by the Appellants that when the officers visited their factory premises, the RG 1 register has not been maintained up to date inspite of clearance of the goods and production in the factory; that it is required under Rule 53 of the Central Excise Rules, 1944 at the material time that every manufacturer shall maintain a stock account and shall enter in such account daily the quantity of goods manufactured, quantity deposited in the bonded store room and quantity removed from the factory and the rate of duty and the amount of such duty by writing in RG I register daily; the Appellants have contravened the provisions of Rule 53 for which the penalty is imposable under Rule 173Q of the Central Excise Rules and the goods found not entered in RG I register are liable for confiscation; that further Rule 226 of the Central Excise Rules also requires that the books of accounts are to be correctly kept and in case of violation to enter required particulars the goods will be liable to confiscation and penalty will be imposable on the defaulter; that it has been held by the Appellate Tribunal in case of CCE Jaipur v. Mittal Laminates (P) Ltd. 1999 (105) ELT 408 (Tri) that "once the goods have reached the stage of fully finished, they are required to be recorded in the prescribed records. Since they were not recorded in the prescribed records, therefore a demand or otherwise for clandestine removal is not required to be proved. In the circumstances, I hold that the goods were liable to confiscation and should have been confiscated." Regarding non-receipt of the inputs after being processed by the job worker within 60 days, the learned Senior Departmental Representative submitted that under Rule 57F of the Central Excise Rules at the material time, a manufacturer was eligible to send the inputs with the permission of the Commissioner and subject to such terms and conditions and limitations as Commissioner may impose to remove the inputs to a place outside the factory; that the permission under Rule 57F(2) are subject to the conditions and limitations prescribed by the Commissioner; that such a condition has been prescribed by the Commissioner by Trade Notice that the inputs have to be received back after reprocessing within 60 days of the removal. He relied upon the decision in the case of Goyal Tin Works (P) Ltd. v. Collector of Central Excise, Meerut, 5. We have considered the submissions of both the sides. As rightly emphasised by the learned Senior Departmental Representative, the Appellants have not disputed the fact that when the Central Excise Officers visited their factory premises on 4.12.93, the RG I register was written only up to 30.11.93 whereas the clearances had been effected upto 3.12.93 as well as production of the excisable goods had also taken place during the said period. The plea of the Appellants that the entries in RG I register could not be made as the clerk was on leave on account of sickness is not tenable in as much as entire work of the factory was going on and besides the goods being manufactured, the goods were cleared from the factory premises. The private production reports were being maintained and the goods had been cleared under GPIs. If all these works could be carried out there is no reason why the entries cannot be made on daily basis in the RG I register which is a statutory requirement under Rule 53 of the Central Excise Rules, 1944. Accordingly the excisable goods which were found not entered in the statutory records are liable to confiscation both under Rules 173 Q and 226 of the Central Excise Rules. It has been held by the Supreme Court in the case of Junjarrao Bhikaji Nagarkar v. Union of India, 1999 (66) ECC 40 (SC): 1999 (112) ELT 772 (SC) that "when we examine Rule 173Q, it does appear to us that apart from the offending goods which are liable to confiscation the person concerned with that shall be liable to penalty upto the amount specified in the Rule. It is difficult to accept the argument of the Appellant that levy of penalty is discretionary. It is only the amount of penalty which is discretionary. Both things are necessary: (1) goods are liable to confiscation, and (2) person concerned is liable to penalty." Accordingly, we hold that the goods which were found within the factory but not entered in RG I Rules are liable to confiscation under Rule 173Q and 226 of the Central Excise Rules, 1944. However, considering the value of the goods and the amount of duty involved, we are of the view that the redemption fine is on the higher side which is reduced to Rs. 10,000.

6. Rule 57F(2) of the Central Excise Rules, 1944 at the material time allows removal of inputs for specified purpose outside the factory with the permission of the Collector of Central Excise and subject to such terms and conditions and limitations as he may impose. The Appellants have removed the goods for further processing by their job worker under the said Rule. No doubt Rule 57F(2) itself does not mention that inputs so removed from the factory are required to be returned within 60 days of the removal. However, as the Rule empowers the

Collector of Central Excise to impose conditions and limitation, the Collector in exercise of that powers, has imposed a condition of receipt of goods within 60 days. If the goods are not received back within 60 days, the Modvat credit is deniable to the appellants as they had availed of Modvat credit and penalty is also imposable for contravention of the provision of the law. The learned Senior Departmental Representative in this regard has referred to Circular No. 8/93 CX 8 dated 15.7.93 wherein it has been provided that the earlier instructions on the issue of non-receipt of goods within the stipulated period of 60 days is reiterated and should be followed scrupulously and in case the job worker fails to return the goods within the period of 60 days and does not seek any extension of time, action should be initiated under Rules 57-I and 173Q so as to safeguard the revenue. However, in the present matter, the appellants have contended that the entire inputs have been received back by them. The Revenue has not controverted the submissions made by the appellants. In view of this fact, the duty demand on the inputs is not sustainable. We therefore, set aside the demand of duty on this count. However, the penalty is imposable on the Appellants both for not maintaining the RGI register and keeping the excisable goods fully manufactured without entering in RG I register and for receiving the inputs back beyond the period of 60 days without seeking extension of time. The penalty of Rs. 30,000 confirmed by the Commissioner (Appeals) is on the higher aside which we reduce to Rs. 10,000. The Appeal is disposed of in the above terms.