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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-28-2004

Reported in : (2004)(167)ELT181TriDel

Judge : P Bajaj

Appellant : Kothari Pouches Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal which has been filed by the appellants against the impugned order-in-appeal, the issue relates to the imposition of penalty on the appellants.

2. The learned Counsel has contended that the goods had never been claimed by the appellants as manufacturer or even as purchaser from any trader and the same had been also not recovered from their premises.

Therefore, no penalty under any provision of the law could be imposed on them.

3. On the other hand, the learned JDR has reiterated the correctness of the impugned order.

4. I have heard both sides and gone through the, record. From the record it is evident that some goods were seized from the premises of the transporter, but the appellants denied their concern with those goods from the very beginning as manufacturer or even as a trader. The Tribunal vide earlier remand order dated

16-6-1998 directed the adjudicating authority to consider this plea of the appellants. But the adjudicating authority without going into this plea, confirmed the penalty by taking into consideration the letter submitted by the transporter, M/s. Azad Transport Co. seeking the provisional release of the goods. The Commissioner (Appeals) has affirmed that order without considering the plea of the appellants. There is nothing in the above said letter of the transport company seeking release of the goods, to suggest that the same was submitted by the company, at the behest of the appellants. The appellants had disowned the goods and there is no evidence to show that these were cleared by them from their factory premises or depot. Therefore, they could not be associated with these goods and no penalty under Rule 173Q could be legally imposed.

5. Consequently, the impugned order is set aside and the appeal of the appellants is allowed with consequential relief, if any, permissible under the law.

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