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Commissioner of Central Excise Vs. Dewas Metal Section Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-2004

Reported in : (2004)(167)ELT52TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Dewas Metal Section Ltd.

Judgement :

1. In this appeal which has been filed by the Revenue, the issue relates to the imposition of penalty on the respondents under Rule 173Q. The Commissioner (Appeals) has set aside the penalty on the ground that duty was deposited by the respondents before the issuance of the show cause notice. He has relied upon the ratio of law laid "down in Karnal Agricultural Industry P. Ltd. v. CCE, Delhi-III - 2002 (53) RLT 921 and Ashok Leyland Ltd. v. CCE, Chennai [2003 (156) E.L.T.955 (T) = 2003 (55) RLT 816].

2. I have heard the learned JDR and representative of the respondents and gone through the record. The bare perusal of the record shows that on 12-7-2001, Central Excise officers conducted physical verification of the stock of the finished goods lying in the factory of the respondents. They detected the shortage of 8300 Kgs. of finished goods (angles/shapes/sections). This shortage was not disputed by the respondents. They even themselves deposited the duty of Rs. 29,614/- voluntarily. However, the show cause notice was still issued to them for

confirmation of the duty and imposition of penalty. The adjudicating authority confirmed the demand and imposed penalty equal to the amount of duty. The Commissioner (Appeals) has confirmed the duty but set aside the penalty as observed above on the ground that duty had been deposited by the respondents before the issuance of the show cause notice. He has relied upon the ratio of law laid down in above referred cases.

3. But in my view, the impugned order of the Commissioner (Appeals) in this regard cannot be sustained. It is not a case where the respondents can be said to had deposited the duty voluntarily before the issuance of the show cause notice. It is a case where shortage of finished goods was found and that the shortage could only be said to be on account of clandestine removal of the finished goods. This shortage was never detected by the respondents themselves; rather it was discovered by the Central Excise Officers after carrying out physical verification of the stock. If there had been no checking by the Central Excise officers, the respondents would not have deposited the duty and very safely pocketed the duty amount evaded by them. The deposit of duty had been made by the respondents after detection of the shortage, simply with a view to save themselves from further penal action. It is not the intent of law to provide protection and shelter to those assessees who firstly indulge in duty evasion by removal of the goods clandestinely and thereafter deposit the duty by pleading guilty. The exemption from penalty cannot be extended to those assessees who voluntarily of their own deposit the duty on account of shortage of the finished goods or inputs. Therefore, keeping all these facts and circumstances of the case, the ratio of law laid in the cases referred by the learned Commissioner (Appeals) is not attracted to the case of the respondents since the duty deposit by the respondents cannot be said to be voluntary in the eyes of law. They deserve to be rather penalised under Rule 173Q for having removed the finished goods without payment of duty which resulted in shortage of 8300 Kgs. of the goods. Therefore, the impugned order of the Commissioner (Appeals) is set aside and the order-in-original of the adjudicating authority is restored. The appeal of the Revenue accordingly stands accepted.

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