

Commissioner of Central Excise Vs. Caps and Caps (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-2004

Reported in : (2004)(169)ELT341TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Caps and Caps (P) Ltd.

Judgement :

1. None has come present on behalf of the respondents in spite issuance of notice of hearing for today. No request for adjournment has been also received. Therefore, I proceed to decide the appeal on merits after hearing the learned JDR.2. This appeal has been filed by the Revenue against the impugned order-in-appeal vide which the Commissioner (Appeals) has set aside the confiscation of the unaccounted goods found lying in the factory of the respondents and altered the penalty from Rule 173Q to Rule 226 by following the ratio of the law laid down in the case of Bhilai Conductors - 2000 (125) E.L.T. 781 (T) = 2000 (91) ECR 569. But he has failed to take note of the judgment of the Andhra Pradesh High Court in the case of Nizam Sugar Factory Ltd., v. CCE - 1987 (27) E.L.T. 40 (AP) and Bombay High Court in the case of Kirloskar Brothers Ltd. v. UOI, 1988 (34) E.L.T. 30 (Bom.), wherein it has been observed that even in the case of non-accountal of the goods by the assessee, the provisions of Rule 173Q can be invoked for the purpose of confiscation and imposition of penalty.

3. Therefore, in my view the matter deserves to be re-examined by the learned Commissioner (Appeals) keeping in view the ratio of the law laid down in these cases. Consequently, the impugned order is set aside and the matter is sent: back to the Commissioner (Appeals) for fresh decision in the light of the observations made above. The appeal stands allowed by way of remand.

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