V.K. Industries Vs. Commissioner of Central Excise

V.K. Industries Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/34232

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-20-2004

Reported in : (2004)(94)ECC351

Judge : P Bajaj

Appellant : V.K. Industries

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been preferred by the appellants against the impugned order-in-appeal vide which the Commissioner (Appeals) had affirmed the order-in-original ordering confiscation of the unaccounted goods and imposing penalty under Rule 173Q as detailed therein. The appellants have submitted written submissions.

2. I have gone through the same and heard the learned DR. The perusal of the record shows that the Central Excise officers visited the factory of the appellants and made seizure of the raw material and the finished goods (oil seals). Thereafter show cause notice was served on them for denying the benefit of the SSI exemption on the grounds that their clearances had exceeded the prescribed limit and that they used the brand name "RIDER SEAL" of another person. But I do not find any tangible evidence to substantiate both these grounds. There is no evidence on the record to suggest that the clearances of the appellants even by adding the unaccounted goods exceeded the prescribed limit in a particular

financial year. The learned Commissioner (Appeals) has simply in the order observed that the SSI exemption limit was crossed by the appellants but how and in what manner, he has failed to discuss.

Therefore, the benefit of the exemption Notification No. 8/98-C.E.dated 2-6-98 which the appellants were availing at the time of clearing the goods, could not be denied to them without ascertaining from the record or any other evidence of having crossed the limit.

3. Similarly, there is no tangible evidence on the record that the brand name "RIDER SEAL" used by the appellants belonged to another person. No evidence has been collected that this brand name belonged to a particular trader or a manufacturer engaged in the trade or manufacture of the oil seals which is the final product of the appellants. The learned Commissioner (Appeals) in the impugned order has simply observed that the appellants had used the brand name but failed to disclose to whom that brand name belonged to. Some goods were no doubt seized from the business premises of M/s. Rider Sales (India), Chota Bazar, Kashmeri Gate, Delhi who are engaged in the trading of automobile parts. But there is nothing on the record to suggest if the proprietor/partner of that firm claimed the ownership of the brand name RIDER SEAL being used by the appellants. Therefore, the benefit of the above said SSI exemption Notification could not be denied to the appellants by simply alleging that they had used the brand name of another person without proving the same.

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