

Unistar Polymers Pvt. Ltd. and Vs. Cce

Unistar Polymers Pvt. Ltd. and Vs. Cce

SooperKanoon Citation : sooperkanoon.com/34233

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-20-2004

Reported in : (2004)(93)ECC193

Judge : K Usha, N T C.N.B.

Appellant : Unistar Polymers Pvt. Ltd. and

Respondent : Cce

Judgement :

1. The first appellant is a manufacturer of plastic film sheets and plates. In the impugned order a duty demand of about Rs. 12 lakhs has been confirmed on it mainly on the ground that it had clandestinely produced and removed certain goods without payment of central excise duty. In addition, the order has confirmed the demand for interest on the duty amount. The second appellant is the Director of the first appellant, manufacturing company. A penalty of Rs. 35.000 has been imposed on him. The present appeals are directed against these orders.

2. The duty demand has arisen from shortage of inputs and finished products observed at the time of stock taking at the appellant's premises on 2.4.1999. Even more so, from the fact that appellant was describing the goods under sale differently in different copies of the same invoice. From A perusal of such copies, we find that while the copy presented to the Excise described the goods as waste of low value, the other copies which were sent to the buyers of the goods described the goods as finished products. Most of the duty demands is on account

of this.

2.1 The explanation of the appellant to the above discrepancy is that the goods removed were actually only waste but other copies of invoices (for such waste) were used for reselling goods (which the appellant had purchased from other parties) and for that reason, related to other goods. It is being stated that on account of shortage of production in appellant's unit, the appellant has to buy goods from market and sell to its buyers to satisfy contracted supplies. However, no commercial evidence about such purchase or re-sale or payment for the purchased goods is produced, to substantiate this claim. Instead, the appellant's position is that their sellers are in a position to file affidavits confirming the sale of the goods to the appellant.

3. We have perused the records and have heard both sides. Appellant manufacturer's conduct is clearly duplicitous. The Appellant's invoice making is clearly contrary to the elementary principle of faithful account keeping. Needless to say, it violates Central Excise rules 52A, 173G etc. also. The explanation proffered now could have been canvassed with some seriousness and credibility if only it was backed by contemporaneous business accounts in the nature of purchase documents, payment particulars etc. Bereft of these supports, the explanation cannot stand. In the absence of acceptable evidence substantiating the purported transactions, filing of affidavits by purported sellers is only an invitation to lie under oath for inducements. Fellow citizens should be spared this, 3.1 There is also evidence going against the appellant's explanation.

The shortages noticed in inputs is clearly suggestive of clandestine production and removal. There is also further evidence suggestive of manufacturing evidence. The adjudication order has relied on the fact that transporters had stated that "GR Book" belonging to the appellant's transport company was fraudulently used by Shri Vipin Gupta (second appellant) in his business to show removal of goods on 1.4.98, while no goods were actually dispatched on 1.4.98 but of the factory premises. In these circumstances, we reject the explanation put forth by the appellant and confirm the finding that goods had been manufactured and cleared clandestinely without payment of duty in the guise of waste.

4. This brings us to the duty demand on missing inputs. It is the appellant's contention that this demand cannot separately survive in view of the demand on clandestinely removed final products. As already stated, shortage of inputs suggests its utilization in clandestine production. Therefore, this demand cannot survive separately from the duty demand on account of clandestine production and removal.

Therefore, relief is required on this score. After deducting this duty amount from the demand on clandestinely removed goods, the net amount works out to Rs. 10,88,676. This amount is clearly due and is payable by the appellants.

4. The next question is that of penalty on the company as well as its Director. The learned Counsel's submission is that both the penalties are unjustified. We are not able to agree. As already pointed out, evasion of duty has taken place on account of duplicitous conduct of the appellant. Fraud is clear. Therefore, penalty has to follow. Taking into account the reduction in the amount of duty and also that the appellant is liable to pay interest, we reduce the penalty on the first appellant manufacturer to Rs. 5 lakhs. We also do not find any justification for interference with the penalty on Shri Vipin Gupta, Director of the company. As already pointed out, he has been rightly indicted for his direct involvement in fraudulent activities (creating false records). The amount of penalty also is small. No interference is called for.

5. In the view we have taken above, the duty demand on the first appellant is reduced to Rs. 10,88,676. Penalty on it is also reduced to Rs. 5 lakhs. The appellant manufacturer shall, in addition, be liable to pay interest as applicable. The appeal of Shri Vipin Gupta (Appeal No. E/462/03-NB-A) is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com