

Commissioner of Central Excise Vs. Asha Handi Crafts

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-20-2004

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Asha Handi Crafts

Judgement :

1. This is revenue's appeal against the order-in-appeal passed by the Commissioner (Appeals). In terms of the said order, duty demand of Rs.86,348/- confirmed against the respondents, redemption fine and penalties imposed, as also the interest demanded were set aside. The revenue's appeal challenges the findings arrived by the Commissioner (Appeals) in the impugned order.

2. Since only one appeal has been filed the same is being treated as appeal only against the main respondent viz. the manufacturer.

Consequently the relief granted to the other parties, who were appellants before Commissioner (Appeals) remain unchallenged and have become final.

3. Heard the Ld. DR. Respondents are not present despite notice nor any cross objection is on record.

4. This is a case of alleged shortage of certain varieties of finished goods (casseroles) in the RGI record which was revealed during the stock verification. Also an excess stock of certain other varieties was also noticed during the said

verification. While the adjudicating authority demanded , duty on the shortage treating the same as clandestine removal the excess stock was confiscated and the bank guarantee amount of Rs. 1,45,165/- was appropriated as redemption amount. Commissioner (Appeals) took a lenient view. In the analysis made by the Commissioner (Appeals), it is observed that, there being several varieties of the finished goods which are packed in a similar carton (Master carton), in the said process of consolidation, the mistakes do occur. The order-in-appeal further proceeds that, in the stock taking also a similar mistake could have occurred. Therefore, the Commissioner (Appeals) took a wholistic view and compared the value of shortage viz Rs. 5,80,639/- versus the value of excess and the difference viz Rs. 4,998/-, being marginal, it was held that the allegations were not well founded.

5. The department's appeal strongly contests the findings of Commissioner (Appeals). It has been mentioned that, the respondents were given several opportunities to explain the respective shortages/excesses and they could not offer any explanation.

6. In this connection 3 note that, the panchnama brings out clearly the facts as are mentioned in the order-in-original. The order-in-appeal proceeds, on the presumption of probabilities of mistakes occurring in the process of account keeping. It also further proceeds, to hold that, even the stocktaking may have an error of a similar nature which the assessee was prone to make. These observations can not form the basis to set aside the findings of the adjudicating authority when the contents of the panchnama, which clearly brings out excesses and shortages are not disputed by any contrary evidence.

7. So far as the finding recorded in the impugned order-in-appeal to the effect that, when the goods are physically present in the factory, they can not be subjected to seizure, I find that, the provisions of Rule 173Q are very clear on this point. Once it is demonstrated that, the fully finished goods are not accounted in the statutory records, the liability of these goods to seizure and confiscation accrues. No other evidence is required to be roped in to suggest that the assessee had made transport arrangements or taken any other steps preparatory to effect clandestine

removal. The activity of clandestine removal, being obviously clandestine in nature, the person engaged in such an activity is not likely to leave a trail of the said evidence for the departmental authorities to pounce upon it. That's why, in the rule, a provision for confiscation of unaccounted finished goods has been made.

Any interpretation that requires the department to prove an attempt to clandestine removal, before effecting confiscation, therefore must be discarded, unless the rule itself is held as ultra vires. In the absence of any such finding that the rule is ultra vires, the action of confiscation of excess stock and consequent redemption fine, penalty etc. as ordered in the order-in-original are fully justified.

8. In the light of above discussions, I find merit in revenue's appeal.

The same is allowed and consequently the impugned order-in-appeal is set aside.

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