Commissioner of Central Excise Vs. Vimal Alloys Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-26-2004

Reported in : (2004)(168)ELT33TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Vimal Alloys Ltd.

Judgement :

1. Heard. This appeal has been directed against the order-in-appeal by the Revenue, vide which the Commissioner (Appeals) has reversed the order-in-original confirming the duty of Rs. 6,810/- on account of shortage of goods against the respondents and imposing penalty of Rs. 10,000/-.

2. I have heard both the sides. From the record, it is quite evident that on taking physical verification of the stock lying in the factory premises of the respondents by the officers on 14-1-99, shortage 1.816 MTs of steel casting involving duty of Rs. 6,810/- was found against the recorded balance in the RG-I. The Manager of the respondents was present at that time and admitted the shortage and the respondents even debited the duty on the spot in their RG 23A Part II vide entry No. 459 dated 14-1-99. The argument of the Counsel that no corroborative evidence has been adduced by the Department to prove the shortage, cannot be accepted being wholly misconceived. When the authorised representative of the respondents (Manager) present at the spot himself admitted the shortage detected

on physical verification of the goods was conducted by the officers, the Department was not further required to produce any corroborative evidence. Rather, the burden, was on the respondents to prove that the admission made by their representative was factually incorrect or obtained from him under coercion or duress.

The authorised representative never retracted his own statement at any stage. Rather the respondents acted on his admission and debited the duty.

3. It was not essential for the Department to prove any clandestine removal 5f the goods as observed by the learned Commissioner (Appeals) in the impugned order, when the shortage of the goods was not contested by the respondents who even debited the duty amount. The ratio of law laid down in 1998 (101) E.L.T. 483 relied upon by the Commissioner (Appeals) in the impugned order, is not attracted to the case of the respondents. That was a case pertaining to clandestine removal of the goods and confirmation of duty on that account.

4. The view of the learned Commissioner (Appeals) that the shortage found was negligible also cannot be attached any legal, value as under the law/Rules, no amount of duty has been quantified for the evasion of which no action can be taken against an assessee. Whether the shortage of the goods found, is of a small quantity or a large one, the law providing punishment on that account to the assessee, is the same. The learned Commissioner (Appeals) could not on this ground that the shortage found was negligible, reverse the order-in-original and exonerate the respondents from the duty liability.

5. In view of the discussion made above, the impugned order is set aside and the order-in-original of the adjudicating authority is restored. The appeal of the Revenue is allowed.