Bhushan Kumar Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-2004

Reported in : (2004)(95)ECC566

Judge : S Kang, a T V.K.

Appellant : Bhushan Kumar

Respondent : Commissioner of Central Excise

Judgement :
1. The appellants filed these appeals against a common adjudication order passed by the Commissioner of Central Excise. In the impugned order, the duty of Rs. 13,58,945/- was confirmed and penalty of equal amount was also imposed on M/s. Super Steel Industries on the ground that they had manufactured and cleared diesel engines without payment duty. The penalties were also imposed on the various dealers of M/s.

Super Steel Industries on the ground that they had connived with M/s.

Super Steel Industries to evade payment of duty.

2. The brief facts of the case are that the appellants are engaged in the manufacture of diesel engines and diesel generator sets and they were manufacturing same under various brand name such as Super Master, Bharat Jyoti, H.M.T. and Usha Star and also under their own brand name.

The factory premises of M/s. Super Steel Industries, M/s. Azad Engineering Works and M/s. Single Machinery Store were searched on 6-3-98 and various documents were taken into possession by the Revenue Authority. Against M/s. Azad Engineering Works and their dealers separate show cause notices were issued.

3. In the present proceedings, the statement of various dealers were recorded by the Revenue Authority to the effect that they had received diesel engines of various brand names manufactured by M/s. Super Steel Industries under the cover of invoices where it was mentioned as 'loose kits'. These diesel engines supplied to various farmers against loan given by various co-operative agricultural banks. The charge of clandestine manufacture and clearance of diesel engines had been based on the ground that as per documents furnished by the various co-operative agricultural banks, the diesel engines financed by them at the request of various farmers, were much more than the diesel engines shown to have manufactured by M/s. Super Steel Industries in their statutory records hence there was suppression of actual manufacture of branded engines.

4. The contention of the appellants is that they were manufacturing the diesel engines under various brand names as well as their own brand name and were clearing the same to various dealers. They were also clearing the loose kits of diesel engines to various dealers. The contention of the appellants is that the various farmers in connivance with the employees of various co-operative agricultural bank got loans with fictitious bills issued by their dealers showing sales of branded diesel engines. The matter was also referred to the Income Tax Department and Income Tax Department made detailed enquiry and dropped the proceedings. During the investigation by the Income Tax Department the Manager of the co-operative agricultural bank admitted that the utilisation certificates in respect of loans given to the farmers were issued without any verification. The contention of the appellants is that the Revenue had not made any physical verification whether the diesel engines which were financed by the various banks were in existence. The dealers of M/s. Super Steel Industries in reply to the show cause notices, issued to them, denied the allegation and specifically submitted that they had not received any diesel engines without proper documents. The contention of the appellants is that they asked for relied upon documents which

was collected from various co-operative agricultural banks and also asked for cross examination of the bank officers as well as dealers. The adjudicating authority neither supplied the documents obtained from the co-operative agricultural bank nor allowed the cross-examination.

5. The appellants, further, contended that in the proceedings initiated against M/s. Azad Engineering Works by separate show cause notices, the adjudicating authority confirmed the demand and imposed penalties on various dealers. M/s. Azad Engineering Works and various dealers filed the appeals and the Tribunal vide Final Order Nos.

A/782-90/2003-NB(SM), dated 30-7-2003 [2003 (157) E.L.T. 321 (T)] set aside the adjudicating authority and allowed the appeals.

6. The contention of the Revenue is that the various dealers of M/s.

Super Steel Industries in their statements submitted that they had received branded diesel engines under the cover of invoices wherein it was mentioned as loose kits. The records of various co-operative agricultural banks also shows that the dealers of M/s. Super Steel Industries sold the branded diesel engines to various farmers against loan advanced by co-operative agricultural banks.

8. In this case, the allegation against M/s. Super Steel Industries is that they had manufactured and cleared the branded diesel engines without payment of duty. The Revenue relied upon the various documents obtained by the various branches of co-operative agricultural banks and the statements of their employees to say that the various farmers purchased the branded diesel engines manufactured by M/s. Super Steel Industries against the loan advanced by the bank and the number of engines so purchased by the farmers is much more/than the manufactured by M/s. Super Steel Industries shown in their statutory records. The documents obtained from the co-operative agricultural banks were not supplied to the appellants nor the officers of the co-operative agricultural banks were allowed to cross examination by appellant in spite of request made. No investigation or verification was conducted by the Revenue Authority in respect of the actual purchase of diesel engines by the farmers. The Income Tax Authority made

enquiry in respect of same allegation and direct investigation of employees of cooperative agricultural bank admitted that the utilisation certificates were issued without physical verification. Further, we find that the various dealers in reply to the show cause notices specifically denied the allegation. Therefore before the adjudicating authority there were two averments one made by the dealers during the investigation which is in favour of the Revenue and another is in reply to the show cause notices where the allegation that they had cleared the branded diesel engines manufactured by the appellants was denied.

In the circumstances, cross-examination of the bank officers becomes necessary to find out truth.

9. Further, we find that the Tribunal in the case of Azad Engineering Works where on the same allegation the duty was demanded from the manufacturers and penalty was imposed on the dealers on the basis of evidence collected from the dealers and the various cooperative banks.

The Tribunal set aside the order on the ground that the documents were not supplied to the manufacturers and an opportunity to cross examination of various officers of the cooperative bank was not granted. The Tribunal in the case of M/s. Azad Engineering Works held that "it is well settled that the charge of clandestine removal has to be established by the department against a manufacturer by adducing cogent and tangible evidence. Such as charge cannot be based on assumptions and presumptions".

10. In view of the above discussion, we find that the allegation of manufacture of diesel engines by M/s. Super Steel Industries cleared without payment of duty is not sustainable. The impugned order is set aside and the appeals are allowed. As the charge of clandestine removal fails against the manufacturer, hence the penalties on the dealers and on other appellants were also set aside. The appeals are allowed.