

Commissioner of Central Excise Vs. Spectrum Packing Mfg.

Commissioner of Central Excise Vs. Spectrum Packing Mfg.

SooperKanoon Citation : sooperkanoon.com/34727

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-26-2004

Reported in : (2005)(180)ELT120Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Spectrum Packing Mfg.

Judgement :

1. This appeal from revenue is directed against the order passed by the Commissioner (Appeals) through which the Commissioner (Appeals) set aside the order passed by the Deputy Commissioner against the respondents. The Deputy Commissioner had confiscated goods, imposing redemption fine, confirmed duty and imposed penalties. The revenue appeal seeks restoration of the order in original.

M/s. Spectrum Packaging (the respondents) are manufacturing Poly Films and bags. Plastic granules is the raw material which they receive for manufacture of the said products. The respondent was sending the raw materials as well as the finished goods to another unit viz M/s Roma Plastics (party) which is not a registered unit under the central Excise. The party was engaged in cutting and sealing process on plastic tubes sheets and bags, which is carried out manually and mechanically. The plastic tubing sheets and bags are received from the respondents by the party and the same were returned by the party to the

respondents without payment of Central Excise duty. No procedure for receipt of the inputs under job work was followed by the party and the party had received plastic granules from the respondents for storage purpose, as claimed in defence during adjudicating proceedings. Consequently plastic granules, plastic tubes, films valued at Rs. 10,38,700/- found in the premises of the party were seized. In the (SIC) adjudication proceedings held before the Deputy Commissioner, it has been held that the party failed to take sufficient precautions to ensure that the goods received by them were duty paid. Accordingly the seized goods were subjected to confiscation, with an option to redeem the same on payment of a fine of Rs. 2,10,000/- since these goods were removed from the premises of the respondents without payment of duty, and amount of Rs. 2,59,675/- was confirmed against the respondents as well as the party.

4. In the impugned order, the Commissioner (Appeals) had observed that, the respondents had despatched the goods to the party accompanied by private challans instead of sending the same under the cover of challans prescribed under Rule 57F(2) (F2 challans) and Commissioner (Appeals), further noted that, the difference in the contents of the two challans was negligible. In the revenue's appeal there is no evidence brought on record to hold the contrary position at therefore remains an undisputed fact that though the private challans did not bear the caption of being issued under Rule 57F (2) nevertheless, in content, the challans did contain the required information prescribed thereunder. There is no other allegation that, the material sent by the respondents when compared with the details figuring in the private challans remains unaccounted for.

5. Since revenue has filed only one appeal, the same is registered as an appeal against M/s Spectrum. Packaging. Consequently the findings against other parties who were appellants before Commissioner (Appeals), have become final and therefore are not discussed.

6. The next prayer in the revenue appeal is to restore the penalty Rs. 75,000/- imposed on the respondents by the original authority. The Commissioner (Appeals) reduced the penalty to Rs. 15,000/- only. In this connection I observe that the Commissioner (Appeals) has correctly noted that, there was no evasion

since the entire material sent out by the respondents was properly accounted for and there was no evasion.

Therefore, I hold that the reduction in penalty imposed on the respondents as ordered by the Commissioner (Appeals) at for procedure infractions does not call for any interference, nor is there any reason to impose any separate penalty on Mr. Rao.

7. In the circumstances, I hold that the revenue appeal is devoid of merits. Accordingly I reject the same.

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