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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-31-2004

Judge : M T K.D.

Appellant : Orbit Pharma Laboratories

Respondent : Commissioner of Central Excise

Judgement :

1. The instant appeal is directed against the confirmation of demand of duty of Rs. 1,18,264/- and penalty of equal amount imposed under Section 11AC of the Act. The order of the adjudicating authority has been confirmed by the Commissioner (Appeals). Hence the instant appeal to the Tribunal.

3. The duty has been demanded on account of shortages noticed in the stock of inputs on which the appellants had taken credit under modvat.

Though in the statement recorded it has been admitted that the missing inputs have been removed in a clandestine manner in the adjudication proceedings a defence was taken that certain consumption which had occurred during the months of January 97 and February 97 had remained to be debited. The appellants are claiming that if this quantity of consumption was to be taken into consideration, the actual duty on the shortages remaining unexplained will work out to Rs. 35,549.96 and not the amount of 1,18,264/- as worked out by the department. This aspect has been dealt with by the Commissioner (Appeals) and it is held that this aspect has not been explained by the appellants. Before the

Tribunal also, except repeating this defence no documentary evidence has been furnished to justify the said claim. Therefore, the dispute regarding the actual shortage is without any basis and therefore I hold that the appellant's plea on this point is correctly rejected by the lower authorities.

4. Their next plea is that since the entire amount has already been debited even before the issue of show cause notice no penalty was imposable. In this connection I would like to observe that the provisions of Rule 57I do not reveal any such exception for the purposes of imposition of penalty. The unlawful act of removal of inputs in a clandestine manner does not get extinguished on mere payment of the duty evaded. May be same authorities have shown a favour to the assessees on the consideration that since the duty was paid before the issue of show cause notice the penalty imposed in the specific case was not warranted. However, this concession shown to an individual by the concerned authorities does not lay down a law that penalty can not be imposed in a case where evaded duty is paid before the issue of show cause notice.

5. I do not find any mitigating factors to enable me to condone the act of evasion indulged by the appellants. Therefore penalty imposed in this case is fully justified. Accordingly I hold that the appeal is without merits. Hence the same is hereby rejected.