Commissioner of Central Excise Vs. Momai Brass Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-28-2004

Judge : A Wadhwa

Appellant : Commissioner of Central Excise

Respondent : Momai Brass Industries

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals) the revenue has filed this appeal. Accordingly, I have heard Shri Bidhan Chandra, JDR appearing for the revenue. The respondents have made a prayer for decision on the basis of the written submission filed by them.

2. As per facts and circumstances, the premises of transporters company was visited by the Preventive Officers of Central Excise on 02.02.2000 when a truck loaded with the excisable goods was found. They seized various goods loaded in the truck as the same were not accompanied with the invoices. The respondents, who were manufacturer of various brass items, claimed a part of the goods and contended that the same were cleared under the cover of invoice which could not be delivered to the transport authority on account of mistake on the part of the person handling the goods.

3. On the above basis show cause notice was issued to the transporters proposing confiscation of the goods and also imposition of penalty. The show cause notice culminated into an order passed by the Addl.

Commissioner vide which he confiscated the goods and also imposed penalty, by rejecting the respondents plea that they were small scale industry and were entitled to clear the goods without payment of duty.

The adjudicating authority did not accept the above plea on the ground that the same were removed clandestinely and hence cannot be considered for granting exemption and as such he demanded duty also. Accordingly, he held that the goods are liable to confiscation and imposed penalty.

4. On an appeal against the above order, Commissioner (Appeals) set aside the order by observing as under:- "There is no dispute that goods were removed from appellants' factory without cover of invoice/bill. This in simple terms would tantamount to clandestine removal. However, following the law laid down by Tribunal in case of Rubicon, 1993 (66) ELT 207. exemption benefit is required to be extended even to those goods that are removed clandestinely, if eligible otherwise. To this extent, the findings of lower authority denying this benefit and demanding duty are incorrect and hence, set aside. Since no duty is held as leviable, there is no reason to sustain the confiscation and imposition of redemption fine. These are therefore, reversed." 5. As regards penalty he reduced the same to Rs. 2,000/- by observing as under:- "In so far as the penal action ordered under Rule 173Q is concerned, I find that as already discussed above, the appellants by not ensuring that excisable goods manufactured by them are removed in accordance with the procedure, prescribed under Rule 52 A resulting in removal and interception of goods in transit without being accompanied by any formal document namely invoice/bill etc. issued by the, have certainly contravened the provisions of Rule 52 A of Central Excise Rules, 1944. And for this breach of 'civil obligation' while following the decision of Supreme Court in case of MCT.M. Corporation Pvt. Ltd. and Ors. 1996 (12) RLT 365, I uphold the penal action ordered against the appellants. The same is however revised from Rs. 10,000/- to Rs. 2,000/- (Rupees Two thousand only)." 6. The revenue in the memo of appeal has pleaded that clearance of the goods from the respondent's factory without cover of invoice/bill would tantamount to clandestine removal. Inasmuch as the exemption in term of small scale Notification was upto specific limit and the respondents were liable to issue the invoices so as to show progressive total of

the clearances. As such they submit the order of the Commissioner (Appeals) is not correct.

7. After considering the above grounds and reasoning of the appellants, I find that undisputably the respondents were small scale unit entitled to benefit of small scale Notification. The revenue in the memo of appeal have nowhere submitted that progressive total of clearances effected by the respondents unit was nearing total exemption value or had crossed the same, in which case the respondents would be entitled to benefit of the Notification. As such the Commissioner (Appeals) has rightly held that the duty cannot be demanded from the respondent and as no duty was leviable confiscation was also rightly set aside. As regards penalty, he has observed by not issuing invoice the respondents has contravened the provisions inviting penal action against them.

Accordingly, he has imposed penalty and reduced the same to Rs. 2,000/-.

8. I do not find any infirmity in view taken by the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.