

Commissioner of Central Excise Vs. Span Heat Transfer Equip. Mfg. P.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-29-2004

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Span Heat Transfer Equip. Mfg. P.

Judgement :

1. These are 5 revenue appeals against a common order. Hence taken together. The respondents are absent. Heard the D.R. In this case, the respondents M/s Span Heat Transfer equipment were charged with the allegation that they had failed to account for in the RG1. record, 10 radiators and 85.500 kgs of brass scrap. The Commissioner (Appeals) in the impugned order accepted the claim of the respondents. That the radiators were not in a fully manufactured condition. The stage for accounting had not reached, as the radiators were still in the gunning bags and were yet to be transferred to the store room. In the revenue appeal except for claiming that non-accountal can lead to penalty and confiscation, no contrary facts have been submitted to demolish the findings arrived at by the Commissioner (Appeals) to the effect that the goods had not reached the stage of accounting. Hence this appeal is rejected. Cross objection also stands disposed off.

In this case M/s Sky Chem Industries Pvt Ltd. are the respondents.

During surprise visit 400 kgs of Dye Ethyl Malonate and 200 kgs of Ethyl Cynoacetate which ought to have been removed on days proceeding the date of visit, were seized. The duty on these goods had already debited, but due to problems of transportation the goods did not go out of the factory. Besides excess stock of 800 kgs of Di Ethyl Malonate and 500 kgs of Ethyl Cynoacetate was also found. As regards this quantity it was claimed that, the goods were not ready for marketing as they were pending final test. The Commissioner (Appeals) held that, this was not a case of clandestine removal and the provisions of Rule 173Q (1) are not attracted. The revenue appeal does not contain any factual details to counter the findings of the Commissioner (Appeals).

I agree with Commissioner (Appeals) that, in the case of goods retained in the factory after debiting duty, provisions of Rule 173Q(1) can not be applied. There is no evidence on record to show mat the goods which were retained in the factory due to transport problems were not recorded in the statutory records. Similarly in respect of the remaining stock for which no entry was made, as against the claim of the appellants that the said chemicals had not reached the stage of recording in the RG 1, no contrary evidence is visible in revenue's appeal. Hence this appeal from the revenue is also rejected.

In this case Shri Sudhirbhai Patel of M/s Sky Chem Industries is the respondent. The adjudicating authority had imposed a penalty of Rs. 5,000/- on the respondent.

4.1 In the light of my findings recorded in the proceeding paragraph in favour of the respondent M/s Sky Chem Industries this appeal of the revenue is also rejected.

The respondents in this case are M/s. Sona Extrusion. On the day of visit by the Central Excise officers, certain excess stock of aluminium collapsible tubes, which the respondents manufacture, was noticed and seized. The adjudicating authority accepted the explanation for a part quantity being the returned goods received for repairs etc. However, a part quantity was held to be non-accounted in the RG 1. The Commissioner (Appeals) however accepted the plea that the said production being from the second shift, posting of production entries could be permitted till the

morning of the next day. In the revenue appeal, except for quoting the citation and provisions of various rules, no factual details are provided to hold that the practice of postponing the entering of the production of the second shift to the next day, amounts to failure to account for the goods. I therefore hold that the Commissioner (Appeals) was correct in extending the benefit of doubt to the respondents. This appeal from the revenue is also therefore rejected.

The respondent Shri J.B. Desai in this case is the Managing Director of the company M/s Sidmak Laboratories on whom penalty of Rs. 10,000/- was imposed by the adjudicating authority, which was set aside by Commissioner (Appeals). The revenue appeal challenges the order of Commissioner (Appeals). In this case the Commissioner (Appeals) held that the allegation of non-accountal of a batch of medicines could not be sustained, since the goods were awaiting quality control clearance.

No contrary evidence having been furnished in the revenue appeal, the said is rejected.

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