Commissioner of Central Excise Vs. the Great Oasis Enterprises (P)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-04-2004

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : The Great Oasis Enterprises (P)

Judgement :

1. The respondents herein, who are registered for manufacture and clearance of biscuits falling under Chapter 19 of the Schedule to the CETA, 1985 on behalf of M/s. Britannia Industries Ltd., availed of credit paid on inputs under the modvat scheme. During the course of visit of Central Excise officers to their factory on 10/02/1996, excess of finished goods in BSR as compared to RG1 balance was detected.

Shortage on stock of inputs was also detected. It was also found that the respondents were clearing burnt/broken biscuits called "floor sweepings" and "dirty dough" without payment of duty/reversal of proportionate modvat credit. Unaccounted excess stock of finished goods lying in BSR, floor sweepings and dirty dough were seized under panchnama. Statements of employees of the assessee as well as M/s.

Britannia Industries Limited were recorded. Show cause notice dated 17/05/1996 was issued proposing recovery of Rs. 46,64,476/- (Rs. 45,23,917/- in respect of floor sweepings and dirty dough and Rs. 1,33,555/- on inputs found short), confiscation of seized goods and imposition of penalty.

2. Vide impugned order the Commissioner dropped the demand on dirty dough and floor sweepings, confirmed the demand on inputs found short, confiscated seized biscuits with option to redeem on payment of fine of Rs. 20,000/- and imposed penalty of Rs. 30,000/- on the respondents. In the present appeal the Revenue challenges the dropping of the duty demand on dirty dough and floor sweepings and release of 36 boxes of these goods.

3. We have heard both sides. We find that identical issue had come up for decision in the case of Britannia Industries Ltd. v. CCE, Bombay 1997 (93) ELT 719 wherein the Tribunal set aside the demand on dry waste consisting of spilled raw material such as flour, sugar, etc., and also under-baked and over-baked biscuits which were thrown on the ground, holding that these were waste and scrap and hence not excisable, even though the flour sweepings were purchased by dairy owners. In the present case the Commissioner has relied upon the above cited decision to drop the proceedings on the burnt and broken biscuits. Following the ratio of the above order, which is squarely applicable to the present case, we are of the view that no interference with the Commissioner's order dropping the demand on floor sweepings and dirty dough is called for and hence uphold the order and reject the appeal.