Cpg Textiles Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-08-2004

Reported in : (2004)(97)ECC130

Judge : R K Jeet

Appellant : Cpg Textiles

Respondent : Cce

Judgement :

1. By this appeal, the appellants challenge the Order-in-Original No.82/95 dated 27,7.95 passed by the Commissioner of Central Excise, Coimbatore, by which the Commissioner has demanded a total duty of Rs. 1,02,804/- from the appellants under Rule 9(2) read with proviso to Section 11A(1) of the CE Act, 1944, He has also imposed penalty of Rs. 20,000/- on the appellants under Rule 173Q and 226 of the CE Rules, 1944 apart from appropriating a sum of Rs. 20,000/-towards the provisional release of the seized goods valued at Rs. 3,58,000/-. The other persons involved in the case and on whom penalties have been imposed are not in appeal and in the present appeal, I am concerned with only the appeal of M/s CPG Textiles.

2. Brief facts of the case are that the officers of Central Excise Erode Division while conducting road patrol on 28.12.1993, intercepted a Tempo van bearing Registration No. TAN 6579 which was found carrying 1275 kgs. of 42s Cotton hosiery yarn on cones in 25 bags with the markings of M/s CPG Textiles, the

appellants herein. The trip sheet was maintained only upto 23.11.1993. As the said yarn was being transported without any valid document, the officers effected seizure of the same on a reasonable belief that the same were cleared clandestinely without payment of duty. As a follow up action, statements were obtained from the driver of the tempo Van and also from one A Srikanth, yarn broker, accompanying the goods, who admitted that the yarn was loaded at the premises of one M/s Murugan Textiles situated near the appellants' premises and that the goods were being transported without any GPs. The officers further visited the premises of the appellants and found discrepancies in the RG1 stock and the physical stock to the tune of 4284 (85 bags) of various counts. The officers also visited various other units such as M/s Premier Textiles, Somanur, wherein the partner of the said Mills had stated that, in respect of certain consignments, they had not received any bills. Officers also visited M/s Kumaravel Textiles who vide their letter dated 31.12.1993 informed the department, that they are not in possession of any Bills or documents for the 10 bags of cones of 32s purchased from the appellants. The officers also visited various other Textile Mills such as M/s BRT Sizing Mills, M/s Thangamman Textiles, M/s Cheran Textiles, M/s Sivasakthi Sizing Mills and obtained statement from the concerned persons wherein they have stated that they have received cotton yarn without proper duty paying documents from the appellants. It was in these circumstances, that show cause notice was issued to the appellants which culminated in the order of adjudication passed by the adjudicating authority whereby he has demanded a total duty of Rs. 1,02,804/- as detailed in the Order-in-Original and imposed penalty and appropriated the amount of Rs. 20,000 as noted above.

3. Shri S. Kandaswamy, learned Consultant accompanied by Shri R.Balagopal, Consultant appeared for the appellants. The learned Consultants reiterated the grounds of appeal and submitted that, so far as the alleged removal of 1275 kgs. of cotton yarn cones in 25 bags without documents is concerned, the Clerk in the factory debited duty in the personal ledger account under serial numbers 236 dated 23.12.93 but due to some urgent work he had to go out and thus could not prepare the GP-1 immediately. However, on his return, he prepared the GP.I and indicated the vehicle No. viz. TAN 6579 and this fact has been noted in by adjudicating authority in para 18 of the Order-in-original. However, duty on this

account has been demanded on the ground that duty had not been paid at the time of removal of the goods from the factory.

Therefore, the demand of duty of Rs. 3,959 is not correct because duty on the goods had already been paid. They, therefore, sought for setting aside this demand.

3.1. As regards the allegation of difference in RG-1 stock compared with the physical stock, which was estimated to be 85 bags, and that there was lapse on the part of the appellants to mark serial number on the bags, it was submitted that the goods were kept in the approved excise store-room for the purpose of marking of serial numbers on the bags. The mill name, count, wt., etc. were already marked on the bags.

Further, the adjudicating authority has not taken note of the fact that 1632 kgs. of 36s cotton yarn and 1882 kgs. of 42s cotton had been cleared under GP.l though this fact has been noted in para 4 of the show cause notice. The remaining quantities were kept for being accounted for at the end of the day as is the normal practice. Thus, the allegation of unaccounted stock found is not correct, argued the Consultants.

3.2 As regards the allegation of past clearances without bills etc, it was submitted that all the removals were made under GP-1, and Bill Nos.

The learned Consultants also invited my attention to the statements recorded from the broker S.A. Ramaswamy dated 18.1.94, wherein he has specifically stated that the yarn supplied to the various parties, relate to the yarn procured from the appellants' mill and also the yarn procured locally. Thus, supply of yarn by the broker, cannot be, supply of yarn, made by the appellants. He has also stated that he has not purchased any yarn from CPG Mills (Appellants) without any bill. They have also invited my attention to the statements recorded from the Managing Partner of the appellants, who in the initial statement itself has clearly stated that no cotton yarn had been cleared from the factory without payment of duty. It was therefore, argued that the allegation of past clearance without payment of duty is not backed by any evidence and hence demand of duty of Rs. 85,543/- is not correct and prayed for setting aside the demand. They also submitted that there is nothing on record to suggest that they have violated any rule and thus there was no case for imposition of penalty. They, therefore, prayed for allowing the appeal.

4. Shri A. Jayachandran, learned JDR appearing for the Revenue defended the impugned order and submitted that the impugned order is backed by evidence collected by the officers during the search of appellants own records and the records of various Textiles Mills as detailed in the Order-in-Original and the order needs to be sustained.

5. I have considered the submissions made by both the sides and gone through the case records. I observe that as noted under para 23 of the impugned order, the demand of Rs. 1,02,804/- has been quantified as under: (1) Duty on past clearance of 27,550 kgs. @ 2.70/kg.

: Rs. 85,543 (2) Duty on 1275 kgs. of yarn Cleared without payment of : Rs. 3,959 duty @ Rs. 2.70/kg. (3) Duty on 4284 kgs. (85 bags) which were found short : Rs. 13,302 ------------------- 6. Now let me deal with the legality or otherwise of each of the above demand, in the above order. As regards the demand of Rs. 85,543/- this demand has been quantified as the demand of duty on the goods alleged to have been cleared to various buyers, in the past. The basis of the demand is that the Departmental officers during their visit to various Textiles mills obtained statements from various persons including the broker Ramasamy who have given statements that the appellants have supplied yarn without GP1 and without bills. The other basis of the department for demand of duty alleging clandestine removal was, entries found in the private note books. As against that, the appellants have indicated the GP1 number and the bill Nos. etc. under which they have cleared the goods to various parties. These details have not been controverted. On going through the records we do not find any evidence to support the stand of the department that the various parties to whom goods were alleged to have been supplied without bills have given any categorical statement against the appellants. Further, the entries in the private note book, based on which the demand has been quantified, is not corroborated by any cogent evidence. I also note from the statement of fact as narrated by the original authority from para 6 onwards, that none of the persons from whom statements have been recorded, has categorically stated as to the quantum of cotton yarn purchased, when it was purchased, mode of conveyance, mode of payment, etc. Their statements are of general nature to say that "they had not received any bills in respect of certain consignment". Allegation of clandestine removal is very serious and it has to be proved with acceptable documentary evidence. As against that, the attempt made to prove the allegation is very casual. It is settled law that charge of clandestine removal merely on the basis of entries in the private note-book is not sustainable unless supported by corroborative evidence. One such judgment is the case of TGL Poshak Corporation v.CCE, Hyderabad, 2002 (140) ELT 187 which has referred to a large number of judgments. I am, therefore, of the considered opinion that, the demand of Rs. 85,543/- is not backed by any evidence. I, accordingly, set aside this demand.

6.1. Coming to the next demand of Rs. 3,959/- on alleged clearance of 1275 kgs. of cotton yarn which was seized by the officers, the appellants have clearly stated that duty on the same had already been discharged vide serial No. 236 dated 23.12.93 and the only lapse on their part was that GP1 was prepared belatedly. I observe that this fact has been noted by the adjudicating authority in para 18 of the impugned order. However, it is an admitted fact that at the time of removal of goods, GP1 had not been prepared, and it was prepared belatedly. There was, therefore, violation of the provisions of law.

However, the adjudicating authority has not imposed any penalty on account on this violation, but has demanded duty only. Inasmuch as the appellants have stated that they have already paid the duty, this aspect of the matter is remanded for causing verification and if it is found that the appellants have already discharged the duty liability on the goods, the present demand is not sustainable.

6.2 As regard the demand of Rs. 13,302/- on the unaccounted stock of 85 bags (4285 kgs.) alleged to have been found and which were not having any serial number, appellants have clearly stated that the other markings such as mill name, count wt. etc. were already there on the bags. I note that the adjudicating authority himself has noted in para 23 that bags serial numbers have already been assigned to the 85 bags in question. Further, he has also noted in para 4 that Shri Ganesan, the Excise dealing clerk of the appellants had explained the alleged shortage 4284 kgs. (85 Bags) as under: (a) Out of the total quantity of 3468 kgs. found in the RG-1 stock, 1882 kgs. have been cleared under GPls. Therefore, the balance that should have been found in physical stock was 1586 kgs. (3468-1882).

As against that the physical balance found was 1581 kgs. Thus, the alleged shortage was only 5 kgs. which is very nominal.

(b) Out of the total 1785 kgs. of 36s, a quantity of 1632 kgs. was cleared under GP1 and thus the physical balance should have been only 153 kgs. The physical stock found was also 153. Thus, there was no shortage of 36s counts.

(c) There was no explanation as to the 2550 kgs. of 34s cotton hosiery cones.

7. It would thus be seen that the total shortage excluding the 5 kgs.

negligible shortage of 42s, was only 2250 kgs. of 34s and not 4284 (of different counts) as has been made out in the Order-in-Original.

Further, I observe that the Commissioner, vide para 21, while giving finding in regard to the variation of 4285 kgs. between the RG-1 stock and physical balance was confused and misdirected himself while coming to a conclusion that clandestine removal has been proved by the removal of 25 bags (1275 kgs.) without GP1. He has thus mixed up the removal of 25 bags on which duty was stated to have been paid, with the difference in stock, relating to 4285 kgs, found on verification. In any case, the difference in stock found was 2250 kgs. and on which also, Bag numbers were marked and only the serial numbers on the bags were missing and these were kept to be accounted for at the close of the day. The violation of not giving the serial numbers, in the background of this case can be considered, as technical in nature. Therefore, seizure of 85 bags (4285 kgs.), in my opinion, was not warranted and so also appropriation of the amount of Rs. 20,000, more particularly when the appellants have explained the difference in weight and when the goods were not removed clandestinely, as held in the case of CCE v. Techno Chem Engineers, 1990 (48) ELT 401 (Tribunal). In view of the above, demand of duty of Rs. 13,302/- on the quantity of 85 bags, is set aside. 8. In the result, the appeal is disposed of as under: (a) The aspect with regard to demand of duty of Rs. 3,959/- on 1275 kgs. of cotton yarn is remanded for verification as to whether the duty has already been paid on it, as contended by the appellants.

(c) Duty of Rs. 13,302/- demanded on 85 bags is set aside.

Redemption fine of Rs. 20,000/- imposed on 85 bags (4284 kgs.) is also set aside.