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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-09-2004

Reported in : (2004)(96)ECC193

Judge : P Bajaj

Appellant : Akshay Spinning Mills

Respondent : Cce

Judgement :

1. In this appeal, the appellants have questioned the correctness of the impugned Order-in-Appeal vide which the Commissioner (Appeals) has affirmed the order of the adjudicating authority ordering the confiscation of the seized goods, imposing redemption fine of Rs. 1 lakh and personal penalty of Rs. 50,000 on the appellants.

2. The learned counsel has contended that since no duty demand has been confirmed and no excess or shortage of the finished goods was found in the factory premises of the appellants, on verification of the stock carried out after the seizure of the goods, the impugned order regarding the confiscation of the goods and imposition of the penalty, cannot be legally sustained. The penalty, according to the learned counsel, could be imposed only if there had been evasion of the duty on the seized goods by the appellants.

3. On the other hand, the learned JDR, has reiterated the correctness of the impugned order.

4. I have heard both sides and gone through the record. The facts made out from the record are: one truck carrying the 100 bags of cotton yarn each weighing 50 kgs. was intercepted opposite Hotel Gold, Panipat. The driver of the truck produced invoice No. 331 dated 14.1.1998 of M/s Shiv Trading Company Panipat. On interrogation, the driver told that the goods were loaded by me from the factory premises of M/s Chirag Spinning Mills. On follow up action, it revealed that M/s Chirag Spinning Mills, M/s Deepak Spinning Mills and M/s Akshay Spinning Mills (appellants) were housed in one premises. The goods were seized on the belief that these were cleared by the appellants' mill without payment of duty. Thereafter the factory premises of the appellants' was also visited by the Officers of the Central Excise and Panchnama was prepared (a copy of which is placed at page 33 of the paper book), but no discrepancy in the statutory record was found by the Officers. No unaccounted/excess goods or shortage of the finished goods was found by the Officers. The appellants even produced the copy of the invoice alongwith a reply to the show cause notice showing the removal of the goods on payment of duty. Correctness of this invoice was not doubted by the Department and no inquiry was also made to show that it was prepared later on.

5. If the goods were non-duty paid, the duty was required to be demanded from the appellants. But strangely enough, no such demand was raised in the show cause notice. In the show cause notice, the imposition of penalty and confiscation of the seized goods was proposed. But when these goods were neither found to be unaccounted nor any shortage of the finished goods was found on account of removal of the seized goods in the factory premises, the plea of the appellants that these goods were cleared under a proper invoice, deserves to be accepted. This view also found corroboration from the fact that no duty has been demanded which was of Rs. 11,608 from the appellants in respect of those seized goods. That being so, neither confiscation of the goods nor imposition of the penalty could be legally ordered.

Therefore, the impugned order cannot be sustained and is set aside. The appeal of the appellants is thus accepted with consequential relief, if any, permissible under the law.

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