Breweries Engineering Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-24-2004

Reported in : (2005)(98)ECC197

Judge : A T V.K., P Bajaj

Appellant : Breweries Engineering Pvt. Ltd.

Respondent : Cce

Judgement :

1. The above captioned appeals have been directed against the common Order-in-Appeal vide which the Commissioner (Appeals) has affirmed the Order-in-Original with a modification by reducing the duty amount from Rs. 13,18,107 to Rs. 11,25,883.

2. The duty has been confirmed on the company appellant No. 1 for having cleared the goods without payment of duty during the years 91-92 to 93-94 and the penalty has been also imposed on the company. Against the appellant No. 2, penalty has been imposed under Rule 209A of the Rules as detailed in the Order-in-Original.

3. The learned counsel has assailed the impugned order on these grounds. Firstly, the relevant/relied upon documents were not supplied to the appellants, these were rather supplied only on 6.5.2002 by the Commissioner (Appeals) and as such, there had been violation of principle of natural justice. Secondly, the goods

not manufactured by the appellants had been wrongly treated to had been manufactured by them without any basis. Thirdly, the full benefit of the SSI exemption notification has not been given to the appellants without any justification. Fourthly, the modvat credit and cum duty price benefit has not been allowed to the appellants while computing the duty amount.

4. On the other hand, the JDR has refuted all the above referred grounds raised by the counsel and produced, photo copies of the letters submitted by the appellants to show that the documents were received by them. He has also produced the copy of the panchnama and the detail of the records seized from the premises of the appellants, while reiterating the correctness of the impugned order.

6. From the record, it is evident that the appellant No. 1 is a company and appellant No. 2 is one of its Director and other Director is his son Paramjit Singh. Appellant No. 2 has got another factory in the name of M/s. M.K. Industries (in short MKI) of which his wife Smt. Mohinder Kaur is the sole proprietor. The raid was conducted on the factory premises of the appellants as well as of Smt. Mohinder Kaur on 7.9.94, by the officers of the Directorate General of Anti evasion, New Delhi on the reasonable belief that they were indulging in the evasion of the central excise duty. The statement of appellant No. 2 was recorded and certain records were also seized by the officers from the factory premises of the appellants. When the show cause notice was issued to the appellants on completion of the investigation raising duty demand of Rs. 13,18,107 for the period 23.7.91 to 31.3.94, they did not file any reply to controvert the allegations made therein regarding the evasion of excise duty by them on the clearance of goods i.e. filter plates, brass levers, small vessels and pre-mashers etc. falling under Chapter 84 of the CETA, manufactured by them. The contention of the learned counsel that the copies of the relied upon documents inspire of demand, were not supplied to the appellants during the adjudication proceedings but were supplied only by the Commissioner (Appeals) on 6.5.2002 and for that reason, the reply to show cause notice could not be filed, is wholly misconceived and misleading. From the documents placed on record by the revenue, it is evident that vide letter dated 13.9.95 Smt. Mohinder Kaur wife of appellant No. 2 and proprietor of M/s. M.K. Industries who was also one of the co-notices with the appellants and on whose

firm, penalty of Rs. 2,00,000 had been imposed but she has not filed any appeal against the order, requested to the A.C. for taking photo copies of the ledger, cash book, sale book, sales tax file etc. which were seized during raid by the officers. She acknowledged the receipt of photo copies of all the documents which she wanted on 26.9.95. Similarly, the appellant No. 2 on behalf of the company appellant No. 1 sought permission from the A.C. vide letter dated 22.9.95 for taking photo copies of the cash books for years 92-93, 93-94 and 94-95 and his request was allowed and he received the photo copies of the documents which he acknowledged with his own hand on 26.9.95. Thereafter, on 12.3.96 again request was made by the accountant of the appellants for scrutinizing the ledger for the year 92-93, voucher files from 1.7.92 onwards till 31.3.93. That request was also allowed by the A.C. The accountant of the appellants vide letter dated 25.1.96 again applied for taking copies of the cash book for the year 93-94 which was seized under the panchnama prepared at the time of raid and the same were supplied to him on 7.2.96. Appellants vide their letter dated 25.4.2002 again requested for the copies of certain documents and the same were also supplied to them and the receipt of those documents was acknowledged by their representative on 6.5.2002.

The receipt of the documents detailed in the annexures appended to the panchnama prepared on 7.9.94 was also acknowledged by the wife of appellant No. 2, on 27.1.2003. From all the above referred facts, it is quite evident that the appellants were supplied complete documents which had been relied upon by the department, but they deliberately did not file reply to the show cause notice. On 6.5.2002 those documents were supplied to them which they requested after passing of the order-in-original and before the decision of the appeal by the Commissioner (Appeals). But during adjudication the copies of the necessary documents were supplied to them. Therefore, they cannot be now heard contending that due to non supply of copies of the documents they could not file reply to the show cause notice. Non-filing of the reply to the show cause notice was deliberate act on their part to prolong the proceedings and from their this act, it can be safely inferred that they had no material/evidence to controvert the allegations contained in the show cause notice. There had been no violation of the rules of natural justice, in our view.

7. The argument of the learned counsel that figures regarding manufacture of the goods by the appellants have been taken from the record of a third party and that the goods not manufactured by the appellants had been attributed to them illegally, cannot be accepted being wholly misconceived. The perusal of the record shows that the ledger, cash book, voucher files for the period in question were seized from the factory premises of the appellants by the officers. The perusal of annexures S.1 to S.3 appended to the show cause notice which was prepared after collecting information from the various breweries, shows, the supply of goods made by the appellants to various parties.

The invoice number vide which the goods were cleared to various buyers by them had been detailed in these annexures. The detail of the clearances through various bills and invoices by the appellants during the period in question, had been also taken from their ledger entries.

The appellants had not been able to controvert the correctness of the facts/figures detailed in these annexure as well as in their ledgers showing clearance of the goods by them to various breweries. Appellant No. 2 in his statement has not denied the sale of goods to the buyers detailed in all these documents. These clearances were not reflected by the appellants in their statutory record. The ledgers of the appellants also revealed that receipt of money from various customers during the financial year 92-93 on account of supply of the goods to them, which was credited to the account of the firm MKI owned by Smt. Mohinder Kaur, wife of the appellant No. 2.

8. No evidence in rebuttal has been adduced by the appellants to prove that there had been no removal of goods by them to various customers as detailed in the above referred documents, without payment of duty. It is also evident that they did not even obtain central excise licence and kept their activity suppressed and concealed from the document. The argument of the learned counsel that clearances of the appellants were within SSI exemption limit of Rs. 30,00,000 and that limit has been wrongly denied to them, cannot be accepted. The goods manufactured by them were of sub-headings 8435 and 8438 falling under single chapter 84. They had been accordingly allowed exemption limit keeping in mind

the nature of the goods manufactured by them. After giving them allowance, the Commissioner (Appeals) through the impugned order had confirmed the duty demand of Rs. 11,25,883 as against Rs. 13,18,107 adjudicated by the adjudicating authority.

9. The argument of the learned counsel that modvat credit and benefit of cum duty price has not been allowed to the appellants also cannot be accepted. The claim for modvat credit was never laid by the appellants before the adjudicating authority or even before the Commissioner (Appeals) by producing any duty paid documents relating to the inputs utilized by them in the manufacture of their final products. The duty amount has been calculated in accordance with law keeping in mind cum duty price and the counsel has not been able to explain how and in what manner cum duty price has not been taken into account by the authorities below.

10. It would not be out of place to mention that wife of the appellant No. 2 Smt. Mohinder Kaur, the sole proprietor of M/s. MKI whose factory premises was also searched and record was seized and was made co-noticee alongwith the appellants proposing imposition of penalty on her firm under Rule 173Q, had not challenged the impugned order inspite of confirmation of penalty of Rs. 2,00,000 against her firm.

11. In view of the discussions made above, we do not find any illegality in the impugned order and the same is upheld. The appeals of both the appellants are dismissed.