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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-16-2004

Reported in : (2005)(179)ELT570TriDel

Judge : P Bajaj

Appellant : Arvind Agarwal

Respondent : Commissioner of Central Excise

Judgement :

1. The above captioned appeals have been filed against the common order-in-appeal, vide which the Commissioner (Appeals) have affirmed the order-in-original with a little modification in the amount of duty.

3. The amounts of the duties confirmed by the Commissioner (Appeals) are, Rs. 1,85,792/- on account of removal of the goods by the appellants without payment of duty in a clandestine manner, Rs. 73,277/- also on account of the clandestine removal of the goods without payment of duty by the appellants and Rs. 90,224/- on account of non-accountal of the raw materials by the appellants at the time of the visit of the Central Excise Officers.

4. So far as duty confirmation of Rs. 73,277/- against the appellants is concerned, the same has not been contested by the Counsel for appellants before us. Therefore, the impugned order in this respect is upheld.5. Regarding the confirmation of duty of Rs. 1,85,792/-, ld. Counsel has contended that the same

has been based on the challans detailed at Sl. Nos. 1 to 27 of the Annexures to Panchnama prepared at the spot.

But the appellants had admitted only the issuance of challans detailed at Sl. Nos. 1 to 16, while the other challans number 17 to 27 of other two firms viz. M/s. Divya Plastic and M/s. Divya Polymer, belonged to Shri Nimit Jain. As such, duty in respect of the goods cleared against these challans could not be confirmed against the appellants.

6. Ld. JDR, Shri Randhir Singh has however contended that the goods of the challans No. 17 to 27 were also cleared by the appellants and they are liable to pay the duty.

7. I have perused the record and it is evident that Shri Arvind Aggarwal, partner of the appellant-firm admitted clearance of the goods without payment of duty only on the strength of challans detailed at Sl. Nos. 1 to 16 of Annexures to Panchnama. He denied the clearance of the goods through other challans at Sl. Nos. 17 to 27 of the Annexures and categorically stated before the officers that the goods on all these challans were cleared by Shri Rajiv Kapoor of M/s. Divya Plastics and M/s. Divya Polymers. His statement has also been corroborated by Shri Arvind Aggarwal, who is authorised signatory of the Divya Plastics and M/s. Divya Polymers by deposing that the goods on these challans were cleared by his firms. The statement of Shri Nimit Jain, who is a proprietor of M/s. Divya Plastics and Divya Polymers that goods of these challans were also manufactured by the appellants and cleared by them and not by his firms, could not be accepted as true. He made this statement with a view to avoid his own liability for payment of duty in respect of those goods. He has not explained in his statement as to how and under what circumstances, the challans of his firms came in the hands of the appellants. He has not produced any document to corroborate his statement in that regard. He is running two firms named above and his employee, Rajeev Kapoor had admitted the clearance of the goods on the basis of the challans in question by these firms and not by the appellants. Therefore, the duty in respect of the goods cleared in a clandestine manner through challans detailed at Sl. Nos. 17 to 27 could not be legally demanded and confirmed against the appellants. It can

only be confirmed against M/s. Diyva Plastics and Divya Polymers.

The duty in respect of the goods cleared through challans detailed at Sl. Nos. 1 to 16 can only be demanded from the appellants, as Shri Arvind Aggarwal, partner of the firm had admitted clandestine removal of the goods under these challans. Therefore, the impugned order confirming the duty in respect of the clearances of the goods made through challans detailed at Sl. Nos. 17 to 27 against the appellants cannot be sustained and is set aside. The amount of duty shall be quantified by the adjudicating authority in respect of the goods cleared through challans at Sl. Nos. 1 to 16 of the Annexures to Panchnama in accordance with law and that duty shall be payable by the appellants.

8. In respect of demand of Rs. 90,224/-, ld. Counsel has contended that it relates to those very goods (inputs) which were found short for having used in the manufacture of the final products removed in the clandestine manner. But since the duty had been demanded on the final products, the double duty could not be recovered from the appellants by confirming this amount and as such the impugned order regarding this demand, also deserves to be set aside. Ld. JDR has however, argued that this demand relates to the Modvat credit which the appellants availed on the raw materials (inputs) found short and as such, they are liable to pay duty on the same. In my view, the contention of the Counsel deserves to be accepted. In the Panchnama, which was prepared at the spot it had been recorded that raw material which involved credit of Rs. 90,224/- was not accounted for by the appellants. In the show cause notice, it has been also alleged that the inputs involving credit of this amount were removed by the appellants as such. Therefore, statement of Shri Arvind Agarwal, Partner of the appellant-firm that, raw materials involving this much credit amount, was utilised in the manufacture of the goods which were cleared by them through Sl. Nos. 1 to 16. Once the duty is being confirmed against the appellants in respect of those goods, the amount in question, as a Modvat credit, cannot be recovered from them. After having saddled with the duty amount, for having removed the excisable goods without duty, they are entitled to claim the credit on the raw material used in the manufacture of those goods. Therefore, the confirmation of duty of the amount of Rs. 90,224/- against the appellants, cannot be sustained and is set aside.

9. In the light of discussion made above, the impugned order stands accordingly modified, regarding the confirmation of duty amounts, detailed above. Keeping in view the facts and circumstance of the case and issue involved, the penalty on the appellant-firm is also reduced to Rs. 30,000/-. However, penalty on appellant No. 2, partner of the appellant-firm, is set aside. On re-quantification of the duty amounts, the appellants shall pay the same accordingly. The appeals of the appellants accordingly stand disposed off.