

Commissioner of Central Excise Vs. Shri Manish Prabhakar Gupta

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-05-2004

Judge : A Wadhwa, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Shri Manish Prabhakar Gupta

Judgement :

1. Revenue has filed this appeal against the Order-in-Original No.75/97 dated 14/7/1997 by which the Commissioner has not confirmed the demand of Central Excise duty against Shri Manish Prabhakar Gupta holding that the charge of clandestine removal of goods is not sustainable for want of evidence.
2. When the matter was called, no one was present on behalf of the Respondent. Shri A.K. Saxena, Ld. D.R., pointed out that the Appeal is coming up for hearing since May, 2004 and the Respondent has never attended the hearing. He, therefore, requested that the appeal filed by the Revenue may be heard and decided ex-parte. As we find force in his prayer, we take up the appeal for disposal after hearing the Ld. D.R. and perusing the records.
3. Briefly stated the facts are that M/s Lalaram Prayagdas Industries, of which Shri Manish Gupta is the proprietor, manufactures 'Gazab' Brand Pan Masala. On the basis of intelligence that Shri Manish Gupta was indulged in manufacturing and removing Pan Masala clandestinely from undeclared/unapproved premises, namely, 'Vatsalya' building, the Central Excise officers visited the said premises on

31/12/1994 which was found locked. After sometime the officers noticed that someone was throwing some gunny bags out of the said premises. On verification, the thrown goods were found to be Gazab Brand Pan Masala, Record pertaining to clandestine manufacture and sale of Pan Masala and Central Excise Records of M/s Lalaram Prayagdas Industries. The search of Vatsalya building revealed that Pan Masala was being manufactured therein and stock of Gazab Pan Masala, private records and huge quantity of cash coupons were also found. Shri Manish who was present there could not produce any document/account in respect of the goods found therein and accordingly the same were seized. In his statement, Shri Manish deposed that he has been carrying on the work of trading 'Supari Mix' in the said Vatsalya building and he had brought the pouch packing machine for testing and that he had done only trial production of Gazab Brand Gutkha. He also stated that the goods seized were brought there from his licensed premises and that the gunny bags had been thrown by his two employees out of fear. Regarding Supari Crusher and heater with 6 racks found in Vatsalya building, Shri Manish Gupta deposed that the same were meant for manufacturing Supari Mix by crushing supari and further processing the same by adding Katechu, lime, menthol and Keora mix perfume and heating the mix in the heater and that tobacco was added to make the mixture sharp.

4. The Commissioner has dropped the demand of duty amounting to Rs. 11,64,501/- holding that though the records show receipt of materials like bettle nut, catechu tobacco zarda, pan masala pudas, etc. and then dispatches, there was no entry showing their use by the respondent as raw material for the manufacture of Gazab gutkha and that the other records pertained to financial transactions which did not support the allegation of manufacturing of gutkha by the Respondent. The Commissioner has also accepted the version of the Respondent that the machinery and materials found in the unapproved premises were used for trial production and processing of rejected duty paid materials. On the other hand the learned D.R. has reiterated the ground of appeal wherein it has been mentioned that the records seized from Vatsalya building contained private note books written in the hand writing of Shri Manish Gupta showing consumption of raw materials like Supari, Katha, lime, tobacco, label rolls, etc. which are used in the production of Gutkha.

The fact that these books were written by Shri Manish Gupta has not been challenged by him. It has further been mentioned that the pouch packing machine was purchased in October, 1993 which clearly shows that the activity of manufacturing of Gutkha was undertaken in the said premises. This is strengthened from the fact of physical stock of gutkha found in the said premises, and from the fact of throwing out of gutkha from the said premises. Two private books maintained by the employees also shows production of the goods on day to day basis and the figures shown in these books are comparable with the figures of production shown in the Note book maintained by Shri Manish Gupta. The salary books and cash books seized from the premises also showed that 7-8 employees were working in the said premise for manufacturing the impugned goods. Credit sale book maintained by Manish Gupta and Ledgers show the sale of the goods on day to day basis and further the private records maintained by the employees also show the sale of gutkha and sale figures are comparable with the figures found in the records maintained by Shri Manish Gupta. The learned D.R. thus contended that there are sufficient materials to prove clandestine manufacture and removal of gutkha which have not been considered and appreciated by the Adjudicating Authority. He, therefore, prays for remanding the matter.

5. We have considered the submissions of the learned D.R. and perused the records. We agree with the learned D.R. that all the material/records/documents brought on record has not been considered by the Adjudicating Authority while holding that the allegation of clandestine manufacture and clearance of gutkha has not been established. The fact of presence of machines, bags of gutkha found in the premises and fact of throwing of Pan Masala appears to have not been considered by the Adjudicating Authority. We also observe that the respondent is not present before us. We, therefore, remand the matter to the jurisdictional Adjudicating Authority to examine all the evidence/materials on record once again and decide the matter afresh after affording a reasonable opportunity of hearing to the respondent.