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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-16-2004

Reported in : (2005)(181)ELT119TriDel

Judge : P Bajaj

Appellant : Mahendra Steels

Respondent : Commissioner of Central Excise

Judgement :
1. In this appeal, the challenge has been made to the impugned order-in-appeal by the appellants vide which the Commissioner (Appeals) has confirmed the order-in-original of the adjudicating authority who ordered the confiscation of the cash and imposed penalty as detailed therein.

2. The learned Counsel has contended that there is no evidence on record to prove the receipt of the excisable goods by the appellants from any manufacturing unit in a clandestine manner and that the cash amount lying with him in his office could not be legally confiscated on the ground that the same was sale proceeds of excisable goods on which no duty was paid. No statement of any manufacturing unit was recorded to prove the receipt of excisable goods without payment of duty by the appellants. Therefore the impugned order deserves to be set aside.

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

4. I have heard both the sides and gone through the record. From the record, it is evident that the appellants are non-registered dealer trading in iron and steel products. Their office was inspected by the Central Excise officers on 3-10-1996. The cash amount of Rs. 54,500/- lying in the office was seized on the ground that this was the sale proceeds of the excisable goods on which no duty was paid. But there is no iota of evidence to prove to substantiate this ground. No presumption, that the iron and steel products sold by the appellants were non-duty paid, could be legally drawn. The appellants even disclosed the names of few manufacturers to the officers from whom they had been purchasing the goods from time to time. But no statement of any prop/partner or authorised agent of those manufacturing units was recorded by the officers during investigation. There is also nothing on record to prove that any proceedings were initiated against any of those units on the strength of the disclosure of the appellants for recovery of duty on the goods cleared by them in a clandestine manner.

Therefore, the statement of Iswar Prasad, proprietor of the appellants firm, without there being any evidence, oral or documentary, could be made basis for passing the impugned order. As observed above, no presumption under the law could be drawn that the cash lying in the office of the appellants, was the sale proceeds of the excisable goods on which the duty had not been paid. The iron and steel products purchased by them from the market could not be presumed to be non-duty paid. Rather the presumption is that those were duty paid. In this regard, reference is made to the ratio of law laid down in the case of Sulekh Ram and Sons v. Union of India and Ors. [1978 (2) E.L.T. (J525) (Del.)].

5. In the light of discussion made above, the impugned order of the Commissioner (Appeals) cannot be sustained and is set aside. The appeal of the appellants is accepted with consequential relief, as per law.