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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-17-2004

Reported in : (2005)(100)ECC269

Judge : P Bajaj

Appellant : Jasch Indus. Ltd.

Respondent : Cce

Judgement :

1. This order will dispose of the appeal filed by an assessee (appellants) as well as the Cross-Objections submitted by the Revenue (respondent) against the common impugned Order-in-Appeal. The appellants have challenged the imposition of penalty on them, whereas the Revenue has questioned the correctness of the impugned order regarding setting aside of the confiscation of the seized goods and imposition of redemption fine in respect thereof by the Commissioner (Appeals).

2. The facts are not much in dispute. On 23.9.1999, the Central Excise Officers intercepted the tempo on Bahalgarh Road, Sonepat, which was loaded with the goods 'Coated Fabrics' manufactured by the appellants.

The driver of the tempo, no doubt, produced the invoices in respect of those goods, but on checking of the record to the appellants after the tempo was brought back to their factory premises, it revealed that they had neither debited the duty

leviable on those goods nor entered in the RG-23 Part-II register or in the PLA account, and this fact was admitted by Shri S.B. Kiran, authorized signatory of the appellants.

3. Thereafter, on carrying out physical verification of the finished goods lying in the factory premises, 3172 finished coated fabric rolls in a packed condition were found. These rolls contained 79300 mtrs.

fabric in all, while in the RG-1 Register, the balance recorded was 73297.5 mtrs. The excess stock of 6002.50 mtrs. was seized through a Panchnama, at the spot, which was prepared in the presence of Shri S.K.Sharma, Company Secretary and Shri S.B. Kiran, authorized signatory of the appellants, and whose statements were also recorded separately, and out of whom, Shri S.K. Sharma, admitted the non-accountal of the excess goods. The adjudicating authority through the Order-in-Original, on adjudication of the show cause notice, ordered the confiscation of the goods found in tempo as well as in the factory premises as unaccounted and Imposed redemption fine, besides imposing personal penalty on the appellants, as detailed therein. That authority also ordered the confiscation of the tempo. But the learned Commissioner (Appeals) through the impugned order has set aside the confiscation of the goods and redemption fine. He has only upheld the penalty.

4. The learned counsel has contended that the confiscation of the goods and imposition of redemption fine has been rightly set aside by the Commissioner (Appeals) as the duty was debited immediately before the issuance of even the show cause notice and that the initial lapse in not debiting the duty was only a technical and minor one which was required to be ignored. He has also contended that after the provisional release of the goods, even no confiscation of the same could be ordered and that even redemption fine also could not be fixed by the adjudicating authority. To support his contention, the learned counsel has made reference to the provisions of Chapter 17 of the Central Excise Manual and instructions of the Board's No. 8/7/59 dated 17.7.61 as well as the ratio of the law laid down by the Larger Bench of the tribunal in the case of CCE, Delhi-III v. Machino Montell (I) Ltd., 2004 (96) ECC 180 (LB): 2004 (114) ECR 894 as well as by the Single Bench in the case of AARKAY Indus. v. CCE, Chandigarh, 2004

(165) ELT 412.

5. On the other hand, the learned JDR, has reiterated the correctness of the impugned order and also referred to the Apex Court judgment in the case of Weston Components Ltd. v. CCE, New Delhi, 2000 (67) ECC 201 (SC) : 2000 (115) ELT 278 (SC).

6. I have heard both sides and gone through the record. It is quite evident from the record that, when the tempo loaded with the goods belonging to the appellants was intercepted on 23.9.99 by the officers of Central Excise on Sonepat Road, those were non-duty paid. The intention on the part of the appellants to evade the duty could easily be inferred without any hesitation from the fact that they made false entry in the invoices regarding the payment of duty, whereas in reality they did not pay the duty by making any debit entry in the RG-23A, Part-II or in PLA account, and this fact was not even disputed by Shri S.K. Kiran, authorized signatory of the appellants, when confronted with the record. It is difficult to accept that it was only a minor lapse on the part of the appellants which deserved to be ignored by the adjudicating authority, rather it is clear cut case of clandestine removal of the excisable goods by the appellants and for camouflaging their illegal act, they wrongly showed the discharge of duty liability in the invoices which they handed over to the driver of the tempo at the time of transportation of the goods. The provisions of Chapter 17 and Board's Circular, detailed above, and referred to by the learned counsel, regarding the seizure of the goods are not of any help to the appellants. In the case in hand, the removal of the goods from the factory by the appellants was not under the proper invoices. There was, in fact, a clandestine removal of the goods without payment of duty by them. The invoices were merely issued in order to camouflage the removal.

7. The goods having been removed without payment of duty were certainly liable to be confiscated. The view taken by the Commissioner (Appeals) that the lapse committed by the appellants was a minor and procedural one, in not debiting the duty in the record, is wholly erroneous, in the light of the facts and circumstances, detailed above, and as such cannot be accepted. The adjudicating authority rightly ordered the confiscation of the goods.

8. Similarly, the confiscation of the excess found goods in the factory premises, in my view, has been illegally set aside by the Commissioner (Appeals). The non-accountal of these goods was accepted by Shri S.K.Verma, company secretary of the appellants, in his statement recorded at the spot and in the face of his admission, the argument of the learned counsel that proper mode of measuring the fabric rolls was not adopted and only on average basis, the quantity of the excess stock was determined, cannot be accepted, especially when Shri S.K. Verma, company secretary, had never retracted his confessional statement at any stage.

9. No doubt, the goods were provisionally released to the appellants, but still, the redemption fine in respect thereof could be legally imposed and argument of the learned counsel to the contrary, in this regard, cannot be accepted in view of the law laid down by the Apex Court in the case of Weston Components Ltd. (supra). It is the principle of law which has been laid down by the Apex Court in that case, that the provisional release of the goods on bond would not take away the power of the authority to levy redemption fine, if subsequent to the release, it was found that goods were liable to confiscation, Therefore, the adjudicating authority rightly imposed the redemption fine and the Commissioner (Appeals), in my view, has illegally set aside the same.

10. Regarding the imposition of the penalty, the learned counsel has relied upon the ratio of the law laid down in the case of CCE, Delhi-III v. Machino Montell (I) Ltd, supra, wherein the Larger Bench of this Tribunal has taken the view that payment of duty before the issuance of the show cause notice takes away the power of the authority to impose penalty under Section 11-AC, but the same is not attracted to the case of the appellants. In the case in hand, there was initially clandestine removal of the goods by the appellants and the duty was paid by them only when they were caught by the Officers. It is not a case where they paid the duty voluntarily after realizing their mistake. Similarly, the ratio of the law laid down in the case of AARKAY Industries, supra, is not of any help to the appellants as in that case the truck loaded with the goods was standing outside the factory premises of the asscssee and duty was deposited by him, at the spot. But such is not a position in the case in hand. In the light of the facts and circumstances,

detailed above.

11. The law laid down by the Allahabad High Court in the case of CCE, Ghaziabad v. Danfoss (India) Ltd., 1984 (2) ECC 380 (All): 1984 (18) ELT 238 (All.) and Prince Multiplast Pvt. Ltd. v. CC, Surat, 2003 (154) ELT 461, referred to by the learned counsel, is also not attracted to the facts of the appellants case. In the first case, the evasion of duty by the assessee, was not found to be intentional, while in the second case storage of the excisable goods was outside the licensed premises without permission and the confiscation was set aside, But the facts in the case in hand are quite different, as detailed above. The ratio of the law laid down in the case of Tin Manufacturing Co. of India v. CCE, Meerut, 2001 (136) ELT 1264 (T), referred to by the learned counsel, is also not attracted to the case in hand. In that case, the shortage was found to be insignificant in percentage of the inputs and for that reason, the disallowance of the modvat credit to the assessee by the Department was not allowed by the Tribunal. But that is not the issue in the present case.

12. In view of the discussion made above, the impugned order of the Commissioner (Appeals) setting the confiscation of the goods and imposition of redemption fine, cannot be sustained and is set aside.

The order of the adjudicating authority, in this regards, is restored, However, the impugned order of the Commissioner (Appeals) regarding the penalty on the appellants is upheld as he has maintained the penalty which was imposed initially by the adjudicating authority.

Consequently, the appeal of the appellants is dismissed, while the Cross-Objections of the Revenue, stand accepted.