

Swaroop thermopack Pvt. Ltd. and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2004

Reported in : (2005)(98)ECC595

Judge : M T K.C.

Appellant : Swaroop thermopack Pvt. Ltd. and

Respondent : Cce

Judgement :

1. The appellants are manufacturer of thermocole products. On 24.2.2000, the Central Excise officers visited their factory and conducted stock taking of the finished goods and inputs. It was found that the RG-23A, Part-I register was not maintained for the last 15 days up to 24.2.2000. The RG-1 register was also not maintained correctly and updated. The officers during stock verification of the raw materials and finished goods found shortage of raw materials on which credit of Rs. 31,713 was taken. The officers also found goods valued at Rs. 1,46,752 in excess than the recorded balance in RG-1 register. The officers also found that the goods were cleared by the appellants on some challans without payment of duty. The duty for such clearance was of Rs. 17,492. Some of the finished goods were also found short than those recorded in RG-1 register for which duty determined was Rs. 9,838. Accordingly, show cause notice was issued to the appellants which was adjudicated by the Addl. Commissioner, who confirmed the demand of Rs. 31,713 on the raw materials found short. He also confirmed the demand of Rs. 9,838 on the finished goods found short and duty of Rs. 17,492 on

the goods cleared under challans without payment of duty. The seized finished goods valued at Rs. 1,46,752 involving duty of Rs. 28,716 were confiscated but the appellants was given option to redeem the same on payment of a fine of Rs. 30,000. The Addl. Commissioner also imposed a penalty of Rs. 1 lakh on M/s. Swaroop Thermopack (P) Ltd under Rule 173Q of Central Excise Rules, 1944 and a penalty of Rs. 30,000 under Section 11 AC of the Central Excise Rules, 1944, He also imposed a penalty of Rs. 3,000 each on Shri Robin Khattar, Director and Shri Kailash Chand Kumawat, Authorised Signatory of M/s. Swaroop Thermopack (P) Ltd. under Rule 209 A of the Central Excise Rules, 1944.

2. The appeal filed by the appellants before the Commissioner (Appeals) was rejected by him.

3. Shri O.K. Tyagi, Ld. Consultant appearing for the appellants pleaded that the seized goods valued at Rs. 1,46,752 found in excess than the recorded balance are not liable for confiscation as it was explained at the time of the visit of the central excise officers that the concerned person, who was making entries in RG-1 register got his hand fractured on 7.2.2000 and due to this, he could not make entries in RG-1 register. Similarly, the entries could not be made in RG-23A, Part-I register although the raw materials were being issued for the manufacture of finished goods and finished goods were being manufactured and cleared. He however, stated that the appellants, M/s.

Swaroop Thermopack have already reversed the credit of Rs. 31,713 on the shortage of the raw materials found by the officers and paid the duty of Rs. 9,838 on the shortages of finished goods found by the officers. He is however contesting the confiscation of the seized goods and demand of Rs. 17,492 on the items of thermo pack, which was cleared by them on challans. He stated that the goods found in excess than the recorded balance are not liable for confiscation as the goods were not likely to be removed clandestinely without payment of duty. He relied on the following decisions in support of his pleas: Delton Cables v. CCE, New Delhi, (2) Empire Fasteners v. CCE, Chandigarh, 2001 (135) ELT 849 (Tri-Del) Sulara Chemicals (P) Ltd. v. CCE, Bolpur, 2002 (145) ELT 230 (Tri-Kol) Reliance Industries Ltd. v. CCE, Regarding demand of Rs. 17,492 confirmed

by the lower authorities, he pleaded that the goods were sent by the appellants in small quantity under challans to other manufacturers and they were issuing invoices after adding the total quantity in the challans and then debiting duties. Since the challans were taken by the investigating officers, they could not correlate duty paid by them on the challans. Regarding imposition of penalty, he pleaded that the penalties are very high on the manufacturer as well as on the other two appellants considering the circumstances of the case, which may be set aside.

4. Shri V. Valte, Ld. SDR appearing for Revenue pleaded the appellants were not maintaining the records of raw materials as well as the finished goods and were manufacturing the goods and clearing the same without accounting for in the RG-1 register. Therefore, the goods found in excess were only for the clearance without accounting for and these are liable for confiscation. He also relied on the decision of the Bombay High Court in the case of Kirloskar Brothers Ltd. v. Union of India and Ors., 1988 (34) ELT 30 (Bombay) wherein it was held that liability of imposition of penalty under Rule 173-Q does not depend on mens rea. Since the appellant had not maintained the records of inputs as well as of finished goods properly and cleared the goods without payment of duty, therefore, the penalty under Rules 173Q and 11AC has been correctly imposed on the appellants. He also pleaded that the officers had visited the premises of the appellants by surprise and they found the difference in the physical stock and the book balance of the raw materials as well as finished goods and the officers also found that the goods were also removed on challans without payment of duty and without making entries in the relevant statutory records.

Therefore, intention to clear the goods without payment of duty is clearly established and since the appellants had not issued any invoice for the goods cleared without payment of duty suppression of fact is also established. Therefore, the penalty has been correctly imposed on the appellants under Rule 173Q and under Section 11 AC. He also pleaded that Shri Robbin Khattar and Shri K.C. Kumawat, the other two appellants had admitted in their respective statements their roles in clearing the goods without payment of duty. Therefore, the penalty imposed on them which is very reasonable does not require any modification.

5. On carefully considering the submissions made by both the sides, I find that the appellants were not maintaining the raw materials account and RG-1 register even though the raw materials were cleared and finished goods were also cleared without payment of duty. The goods found in excess than the recorded balance were also kept for clearance.

Since the finished goods were already cleared by the appellants without payment of duty involving duties of Rs. 9,838 and Rs. 17,492 and without accounting for in their records and without issuing proper central excise invoice, therefore, intention to clear the goods without payment of duty is clear and the goods found in excess were correctly liable for confiscation. It is not a simple case of non-accountal but the un-accounted goods were already cleared by the appellants and the other were kept with an intention to clear those goods clandestinely.

These were not entered in any of the records. Therefore, these are liable for confiscation. The decisions relied upon by the appellants are not helpful to the appellants as in case of Sterlite Industries (I) Ltd. (supra), it was held that non-maintenance of entries in the RG-1 register without there being any allegation or removal or admitted removal with intent to evade duty, penalty and confiscation under Rule 173Q cannot be sustained and in case of Sulara Chemicals (P) Ltd. (supra), it was held that confiscation of goods in excess of the recorded balance not sustainable in absence on any evidence on record that such excess goods intended to be removed without duty. In case of Empire Fasteners (supra), it was held that excess raw materials and finished goods lying in the factory premises do not, ipso facto, attract confiscation or penal provisions unless there is an evidence of the clandestine removal. Penalty is leviable for non-accountal of the goods in the statutory records. In the case of Delton Cables (supra), it was held that at the time of seizure, appellants were about to remove or in the process of removing goods without payment of duty.

Penal provisions of Rule 173Q not attracted, penalty under Rule 226 is imposable. I find that in the present case the appellants were not maintaining the records for more than two weeks and they had cleared that goods without payment of duty under challans and without accounting for and without payment of duty, therefore,

the intention to clear the goods without payment of duty is clearly established against them. Therefore, the seized goods are liable for confiscation and penalty is also imposable on the appellants. Considering the facts and circumstances of the case, I reduce the redemption fine to Rs. 20,000 and penalty imposed on M/s. Swaroop Thermopack P. Ltd. to Rs. 30,000 under Rule 173Q and Rs. 20,000 under Rule 11 AC. The penalty imposed on the other two appellants are very nominal and these do not need any modification. This was also not pressed during the hearing. In these circumstances, the order of the Commissioner (Appeals) is modified to the extent of reducing the redemption fine to Rs. 20,000 and penalty under Section 11 AC to Rs. 20,000 and under Rule 173Q to Rs. 30,000.

With this modification, the order of the Commissioner (Appeals) is upheld and all the three appeals are rejected.

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