Commissioner of Central Excise Vs. Premier Polyfilms Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-09-2004

Reported in : (2005)(182)ELT410TriDel

Judge : P Bajaj, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Premier Polyfilms Ltd.

Judgement :

1. In this appeal which has been filed by the Revenue against the impugned order-in-appeal, the issue relates to the denial of Modvat credit to the respondents on the short found inputs.

2. The learned SDR has assailed the impugned order by contending that the stock checking of the raw material/inputs was carried out by the officers of the Central Excise in the presence of the authorized representative of the respondents and it revealed that RG 23A Part-I entries posted were only up to 31-10-99 and some loose slips known as store requisition slips were recovered but no entry on that basis was found in the statutory register. He has also contended that the approach of the learned Commissioner (Appeals) for dropping the duty demand against the respondent had been erroneous as the duty has been demanded in respect of the short found inputs and not on the clandestine manufacture of the finished goods. Therefore, the impugned order deserves to be set aside.

3. On the other hand, the learned counsel has contended that the entries in the register (RG 23A Part-I) was incomplete on account of the illness of the concerned official and the raw materials shown in the loose slips was not taken into account while arriving at the shortage of the inputs. He has further stated that for verification of these facts, the matter may even be sent back to the Commissioner (Appeals).

5. We find that the factory premises of the respondents was inspected by the officers of the Central Excise on 22 & 23-11-99 and they found that entries regarding the inputs made in RG 23A Part-I by the respondents were only up to 31-10-99. No doubt, they have taken the plea that no entry of the stock, was made in the statutory record due to illness of their concerned official and that their store requisition slips regarding inputs issued for the manufacture of the final products has not been taken into account. But it was for them to substantiate their plea and onus was not on the Revenue for proving that there was no mala fide intention on the part of the respondents in not making the entries. Moreover, the slips which were recovered from the factory premises and regarding which reference was made in the panchnama prepared at the spot were taken note of by the officers and it is only thereafter figures of the short found inputs had been arrived at.

However, we find that some more slips were brought to light by the respondents later on and they wanted the department to take note of those slips while filing reply to the show cause notice, in order to substantiate their plea that there was no shortage of inputs. But genuineness of those slips was to be established by the respondents. It was also for them to correlate the entries in those slips with the short found raw material. But unfortunately, we find that the learned Commissioner (Appeals) has approached the issue from a different angle which has no relevance at all. He has opined in the concluding part of the order that the department has failed to produce any evidence regarding clandestine manufacture and clearance of the finished goods by the respondents and after following the ratio of law laid down in Sunder Silk Mills (P) Ltd. v. CCE, Hyderabad - 2003 (153) E.L.T. 176 (T), had dropped the proceedings/ demand against them. But he has lost sight of the fact that no duty demand had been raised by the department on account of clandestine manufacture and removal of the goods. The ratio of law laid down in the aforesaid case has no application to the present case. Thus, he has obviously failed to appreciate the controversy in the case which has resulted in the miscarriage of justice. He was to decide if the shortage of inputs, as pointed out by the Revenue, was proved or not, from the evidence submitted by the respondents. It is only after finding that from the documentary evidence adduced by the respondents, shortage of input was not proved, he could drop the proceedings. We find that the matter deserves to be re-examined by the Commissioner (Appeals) by taking into account the fact and issues involved therein.

6. Consequently, the impugned order is set aside and the matter is sent back to the Commissioner (Appeals) for fresh decision after hearing both sides.