

Rathi Industries Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-13-2005

Reported in : (2005)(100)ECC367

Judge : P Bajaj, M T K.C.

Appellant : Rathi Industries Limited

Respondent : Cce

Judgement :

1. In this appeal, the appellants have challenged to the validity of the impugned Order-in-Appeal vide which the Commissioner (Appeals) has confirmed the Order-in-Original of the Adjudicating Authority who confirmed duty demand of Rs. 2,11,167 in respect of the finished excisable goods found short in the factory and cenvat credit demand of Rs. 12,74,628 in respect of the inputs found short and also imposed penalty on the appellants as detailed therein.

2. The learned counsel has contended that no proper physical verification of the finished goods was conducted by the officers who visited the factory premises of the appellants on 22.2.2001 and that shortage was arrived at by working out on average basis. In fact there was no shortage of the excisable goods. Similarly regarding shortage of inputs, learned counsel has argued that quantity of inputs which was in two furnaces for manufacture of the final products was not taken into account and even the inputs which had gone into the manufacture of the goods on the date of the visit by the officers, had also not been taken note of by the officers

while working out the shortage. He has further argued that even the value of the inputs was also not correctly determined. Therefore, the impugned order deserves to be set aside.

3. On the other hand, learned SDR has reiterated the correctness of the impugned order and contended that in the face of the statement of the authorized signatory recorded at the spot, the mode of carrying out the physical verification by the officers of the finished goods and even of the inputs cannot be disputed by the appellants. He has also referred to the grounds of appeals to further contend that the alleged raw material/inputs supplied to the furnaces was not accounted for in the books of accounts and as such, had been rightly not taken note of.

5. The appellants were engaged in the manufacture of Tor Steel and they were availing cenvat credit on the inputs used for the manufacture of finished goods. At the time of visit by the officers to the factory, Shri P.K. Singhal, Manager (Finance) was present. He consented to the mode adopted by the officers for the physical verification of the goods. He stated that mode of actual physical verification was not practicable and feasible to ascertain the stock. He also stated that appellants also adopted the same procedure as has been adopted by the officers for the physical verification of the goods. Appellant company was bound by his statement especially when he never retracted at any stage. Therefore, after confirmation of the duty the appellants cannot be permitted to plead that there was no proper physical verification of the goods. The plea of the appellants in their reply to the show cause notice in this regard, in our view, has been rightly ignored being an after thought. It may also be mentioned that Shri P.K. Singhal, Manager (Finance) did not dispute the correctness of the quantity of the finished goods found short, in his statement. Therefore, the duty in respect of the finished goods found short during the visit by the officers to the factory of the appellants has been rightly affirmed. We do not find any sufficient ground to interfere with the findings of the Commissioner (Appeals) to that effect.

6. This takes us to the shortage of inputs on which the learned counsel has made much stress on the ground that the raw material in two furnaces and the day's production in the furnaces has not been taken into account and if that had been

counted, there would not have been any shortage. But we are unable to subscribe to this view of the counsel for want of any corroboration from any documentary evidence.

Shri P.K. Singhal, Manager (Finance), in his statement, has no doubt stated that 400 MT of raw material was lying in the two furnaces in the factory but did not produce even a piece of paper on which this material was entered at the time of supplying to the furnaces. Even in the grounds of appeal, it has been, fairly conceded by the appellants that this material was not accounted for, in the record. That being so, it has been rightly ignored by the authorities below.

7. Regarding the raw material used in the day's production in the finished goods on 22.2.2001, the date of the physical verification by the officers, on visit, to the factory premises of the appellants, neither any figure has been furnished nor any document to substantiate the same. Moreover, that production has not been taken note of while computing the shortage of the raw material. That production was of the finished goods. Therefore, we do not find any illegality in the impugned order regarding quantity of the inputs found short in the factory premises.

8. Regarding valuation aspect, in our view, the contention of the learned counsel deserves to be given due weight. We find that on the short found inputs, the cenvat credit availed by the appellants can be demanded from them and not the market value. Therefore, the amount will be re-quantified in respect short found inputs and, then accordingly, will be intimated to the appellants who will pay the same.

9. The imposition of penalty on the appellants, in our view, is also exorbitant as the same has been imposed equal to the duty amount found payable by the appellants. They had been also directed to pay interest.

Therefore, keeping in view the facts and circumstances of the case, we reduce the penalty to Rs. 1,00,000.

10. In the light of the observations made above, except for the above referred modification, the impugned order is upheld. The appeal of the appellants

accordingly stands disposed of.

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