

Rado Industries Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-2005

Reported in : (2005)(184)ELT223TriDel

Judge : N T C.N.B.

Appellant : Rado Industries Limited

Respondent : Commissioner of Central Excise

Judgement :

1. Both the above appeals are directed against the same order.

Accordingly, they were heard together and are disposed of under common order.

2. The material facts leading to the passing of the impugned order are that M/s. Rado Industries Limited, Faridabad is a manufacturer of Coated Textile Fabrics which are liable to excise duty under Chapter V Heading 5903 of the Central Excise Tariff. Central Excise Officers visited the appellant's factory on 8-12-1999 and found excess of coated textile fabrics, to the extent of 6393 mtrs. They also found substantial excess of inputs. Accounts relating to manufacture and procurement of raw materials had been entered only up to 1-12-1999. Investigations were taken up and the case adjudicated. The lower authorities reached a conclusion that the "party initially did not enter the excess quantity textile fabric to excise record to clear the same clandestinely without payment of Central Excise duty". It was also held that the procurement of unaccounted inputs

was to sub serve clandestine production and non-duty paid removal of the goods.

Accordingly, confiscation of the excess goods, imposition of penalty etc. have been made.

3. The submission of the appellant is that the findings are not justified in the facts and circumstances of the case. The contentions are that the goods in question are mostly made for Governmental agencies like Defence, Railway, Transport Corporation etc. It is being specifically pointed out that the excess finished fabrics in question had been affixed with the monogram of Indian Railway. It is also being explained that the production was pursuant to orders from such authorities. With regard to the failure to keep accounts properly, the explanation was that there was a marriage of the daughter of the Director on 29-11-1999 and the power of attorney holder Shri Kailash Gupta and others were fully preoccupied with the ceremonies connected with the marriage; and as a result, the accounts could not be entered from 2nd to 8th December when the Officers visited. With regard to the excess raw materials, it is also being stated that the shed of M/s.

Rado Rexin unit, Plot No. 132, Faridabad had collapsed and raw material were transferred to the appellant's premises at Plot No. 101 under private challan. The lower authorities have rejected the explanations on the ground that they are belated and on the date of visit these explanations were not offered.

4. During the hearing of the case learned Counsel for the appellants emphasized that the rejection of the appellant's explanation was not reasonable at all inasmuch as all the facts stated therein were correct and were capable of verification. The Counsel emphasized that given the nature of the goods and their production against specific orders of Governmental authorities, it was not reasonable to conclude that there was unaccounted production intended for clandestine removal without payment of duty.

5. As against the above contentions of the appellants, learned SDR has pointed out that the failure to keep accounts correctly remained established and the explanation also is not satisfactory inasmuch as the quantity do not fully tally.

6. As already noted confiscation is on the basis that the unaccounted finished goods were intended for clandestine removal. This finding does not appear to be reasonable. It is not in dispute that the goods bore the monogram of the Indian Railway. The production was also against order of the Railway. The appellant's books of account remain unentered for six days on account of their being busy with a marriage. Therefore, the excess would appear to be on account of failure to write accounts on a day to day basis rather than because of any intention to evade duty. The fact that the goods are specifically produced against orders of the Governmental authorities also goes against the finding of intention to produce clandestinely and to remove without payment of duty. In these facts and circumstances the findings and orders of the lower authorities are not justified.

7. In view of what is stated above, the impugned order is set aside and the appeals are allowed.

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