

Dhillon Kool Drinks and Beverages Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2005

Reported in : (2005)(100)ECC362

Judge : A T V.K., P Bajaj

Appellant : Dhillon Kool Drinks and Beverages

Respondent : Cce

Judgement :

1. Though these two appeals are posted for hearing applications for staying the recovery of penalty imposed on M/s. Dhillon Kool Drinks & Beverages Ltd. and their General Manager, we taken up the appeal, themselves for disposal after staying the recovery of penalty as the entire amount of duty stands deposited.

2. Shri K.K. Anand, learned Advocate, mentioned that M/s. Dhillon Kool Drinks & Beverages Ltd. manufacture aerated water; that the penalty has been imposed on the Appellants on the ground that they had effected clearance of excisable goods by taking credit in their PLA without actually depositing the duty due on the bank. The learned Advocate submitted that they had an OD account with the bank learned Advocate submitted that they had an OD account with the bank against which the Central Excise duty was credited to the account of the Revenue; that they were of bonafide belief that the amount of TR6 challans presented by hem would be debited to their account; that the Bank never informed them that there were insufficient balance in their OD Account. He, further, submitted that they had

sufficient MODVAT/CENVAT Credit balance on the dates of presentation of TR-6 challans in the Bank and, therefore, there can be no deliberate/malafide intention to manipulate TR-6 challans to delay/defer the payment of duty; that the Appellants have paid the entire amount of interest even before the issuance of the show cause notice; that thus they have already been penalized to the extent of payment of huge amount of interest. He relied upon the decision of the Larger Bench of the Tribunal in the case of CCE, Delhi-III v. Machino Montell (I) Ltd., 2004 (96) ECC 180 (T-LB) wherein it has been held that where the duty has been deposited before the issuance of the show cause notice, no penalty can be imposed under Section 11AC of the Central Excise Act. Finally the learned Advocate submitted that the Adjudicating Authority has himself held in the impugned Order that the present case does not amount to evasion of duty or clearance of goods without payment of duty; that in view of such a finding, no penalty can be imposed on either of the Appellants.

3. Countering the argument, Shri Randhir Singh, learned D.R., submitted that there were difference in the dates on which the Appellants took credit in their PLA and subsequently used the credit for payment of duty, and the dates when the amount was actually credited to the Government account and thus there were clearances of the goods without having sufficient balance in Their PLA; that this has been admitted by Shri B.C. Kataria, General Manager (Finance), in his statement, wherein he has deposed that they had preponed the taking of Credit in some cases. The Learned D.R. mentioned that the Appellant were not putting any date on TR-6 challans and the bank was also putting undated signatures on receipted treasury challans which is apparent from the statements of their employees and Senior Bank Manager, that the Appellants were in knowledge of the fact they were taking the credit in their PLA prior to the date when their account was actually debited; that Shri B.C. Kataria, in his statement dated 10.3.2003, has stated that they had been taking credit in PLA without getting the receipted TR-6 challans. The learned DR submitted that as they had cleared the goods without having adequate balance in their PLA, Penalty is imposable on the Appellants.

4. We have considered the submissions of both the sides. The case of the Revenue is that the penalty is imposable on the Appellants as they had cleared the excisable goods by debiting the duty amount in their PLA when in fact they were not having the adequate and sufficient balance in their PLA. The contention of the Appellant on the other hand is that they were having a current account with over-draft facility with the bank and after issuing TR-6 challans they were taking the Credit in their PLA and the Bank had never informed them about the money being no available in their Account. They have also mentioned, which has not been rebutted by the Revenue, that they were having sufficient balance in their CENVAT Credit account and as such there was no intention to remove the goods without having sufficient balance in their PLA. The Adjudicating Authority has also treated the present matter as "a case of clearance against inadequate balance, rather than clearance without payment of duty". The learned Advocate has also emphasized the fact that where the factual position was brought to their notice, they have been deposited the interest amounting to more than Rs. 70 lakhs even before the issuance of show cause notice which reveals their bonafide intention. In view of all the facts and circumstances of the case coupled with the fact that there was balance in the Appellant's CENVAT Credit Account and they have paid the interest leviable on account of delay caused in transferring the money to the Government Account by their Bank, it is not a case fit for imposition of penalty on the Appellants. We, therefore, set aside the penalties imposed on both the Appellants.