

Commissioner of Central Excise Vs. D.S. Plastic

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-2005

Reported in : (2005)(185)ELT299TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : D.S. Plastic

Judgement :

1. has contested the impugned order- in-appeal vide which the Commissioner (Appeals) has dropped the penalty on the respondents on the ground that they had deposited the entire duty amount before the issuance of the show cause notice by following the law laid down in the case of Dynamatic Technologies Ltd. v. CCE, Chennai - 2003 (54) RLT 675 and Amritsar Crown Caps Pvt. Ltd. v. CCE, Chandigarh - 2002 (140) E.L.T. 437.

2. None has come present for the respondents despite notice. There is no request for adjournment. Therefore, I proceed to decide the appeal after hearing the learned DR.3. From the record, it is evident that the respondents tampered with the statutory excise record and also the sale invoices to facilitate the removal of the goods and thereby evasion of the excise duty during the period in dispute. They also changed the debit entries in the RG 23A Part II Col. V., copies of the sale in voices as well as in the triplicate copies of the buyer/transporter. After they were caught from the copies of their sale invoices, they no doubt deposited the

entire duty amount, but keeping in view the facts and circumstances of the case, this deposit cannot be said to be voluntary by them. It was made by them when they were confronted with tampering of record/sale invoices. Therefore, their conduct did not warrant the setting aside of penalty on them. The ratio of law laid down in the above referred cases relied upon by the learned Commissioner (Appeals) could not be invoked as the facts in those cases were, not the same as in the present case.

Therefore, the impugned order of the Commissioner (Appeals) setting aside, the penalty on the appellants, cannot be sustained and is set aside. The order-in-original of the adjudicating authority is restored in respect of penalty. The appeal of the Revenue accordingly stands disposed of.

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