

Ok Play India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-2005

Reported in : (2005)(102)ECC269

Judge : M T K.C.

Appellant : Ok Play India Ltd.

Respondent : Cce

Judgement :

1. Appellants are manufacturer of plastic toys. They are sending the plastic granules for pulverization to their job worker M/s. Rapid Engineering Company Pvt. Ltd. Some of the toys manufactured by appellants are dutiable and some are exempted from duty. The Department has issued show cause notice to the job worker demanding duty on the pulverized plastic granules on the grounds that these are being used in the manufacture of exempted toys. The case against the job worker was finally dropped by the Tribunal under Final Order No. A/634/04-NB(C) dated 2.9.04 holding the demand as time barred. The present appeal is against the imposition of penalty of Rs. 1,00,000/- on the appellants.

The penalty was imposed on the appellants by the original Authority on the ground that M/s. O.K. Play India Ltd. sent the inputs under 57F(2) challans and received the excisable goods on the said challans without payment of duty, knowing fully well that they had not fulfilled the conditions of Notification No. 214/86-CE. They colluded with the party No. 1 (M/s. Rapid Engineerings Pvt. Ltd.) in the

manufacture and clearance of the excisable goods without payment of duty and hence abetted the evasion of duty on polyethylene powder. The Commissioner (Appeals) has given finding that the appellants set the inputs under 57-F(2) challans and received the excisable goods on the said challans and had not discharged duty liability. Therefore, the plea of the appellant is not tenable.

2. Ms. Reena Khair, learned Advocate pleaded that neither any duty has been demanded from the appellants nor there is any finding given by the lower authorities that the goods were liable for confiscation. She relied on the decision of the tribunal in the case of (i) Sandvik Asia Ltd. v. CCE, Pune - 2003 (159) ELT 828 where it was held that when it is found that no goods are liable for confiscation, we do not find any cause to invoke for provisions of Section 209A of the Central Excise Rules, 1944. She also relied on the Supreme Court decision in the case of (ii) CCE v. HMM Limited 1995 (76) ELT 497 where it was held that Penalty is not imposable unless department is able to sustain its demand show cause notice which was under challenge on the ground of limitation and (iii) Elecon Engg. Co. Ltd. v. CCE, Ahmedabad-II 2004 163 ELT 319 (Tri-Mum) where it was held that "there had not been suppression of relevant facts on the part of the appellant, we hold that imposition of penalty by invoking Section 11AC and demand of interest under Section 11AB are unsustainable. In the light of the above, penalty imposed on the appellants in E/3681, 3679, 3680 and 3682/98-Bom. under Rule 209A of the Central Excise Rules, 1944 cannot be sustained." She, therefore, pleads that since no duty has been confirmed either against the job worker or the appellants not the goods in dispute were found liable for confiscation, therefore, penalty under rule 209A of the Central Excise Rules, 1944 cannot be imposed on the appellant.

3. Heard Shri P.M. Rao, learned JDR. He reiterated the findings of the Appellate Authority.

4. On careful consideration of the submissions made by both the sides, I find that demand against the job worker has been set aside by the Tribunal under Final Order No. A/634/04-NB(C) dated 2.09.04. I also find that neither the original Authority nor the Appellate Authority had given any finding about the liability of the

confiscation of the disputed goods. Therefore, penalty cannot be imposed on the appellants under Rule 209A of the Rules. Accordingly, I set aside the penalty of Rs. 1,00,000/- imposed on the appellants and allow the appeal.

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