

Cce Vs. Modern Polyplex Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-2005

Reported in : (2005)(102)ECC112

Judge : S Kang, Vice

Appellant : Cce

Respondent : Modern Polyplex Pvt. Ltd.

Judgement :

1. When the case was called none appeared on behalf of the respondent.

Heard Ld. JDR.2. The brief facts of the case are that on 15.7.99 or 18.7.99 the officers of Revenue department visited the premises of respondents and on physical verification it was found that certain final product and waste and scrap was unaccounted. Show-cause notice was issued for confiscation of the excess goods. The adjudicating authority confiscated the goods and allowed the same on payment of redemption fine of Rs. 20,000 and imposed a penalty of Rs. 5,000. On appeal filed by the respondent, the Commissioner (Appeals) after relying upon the decision of the Tribunal in the case of CCE, Raipur v. Bhilai Conductors (P) Ltd., 2000 (125) ELT 781 held that the goods which are lying within the factory are not liable to confiscation in the absence of any allegation about the assessee indulging clandestine removal of the goods.

3. The contention of the Revenue is that the goods which were not accounted in the statutory record are liable for confiscation and relied upon the decision of Hon'ble Bombay High Court in the case of Kirloskar India Ltd. v. Union of India, 2002 (83) ECC 497 (Bom.). The Revenue also relied upon the decision in the case of CCE v. Universal Auto Products Ltd., 2001 (125) ELT 470 and in the case of Media Video v. CCE, 2003 (55) RLT 407. The Revenue also relied upon the decision in the case of International Engineering & Mfg. Services (P) Ltd. v. CCE, 2001 (135) ELT 551, wherein the Tribunal held that unaccounted goods are liable for confiscation under c. The appeal filed by the assessee against the decision of International Engineering & Mfg. (supra) was dismissed by Hon'ble Supreme Court reported as 2002 (139) ELT A87.

4. In view of the decision of Bombay High Court in the case of Kirloskar India Ltd. (supra) and decision of the Tribunal in the case of International Engineering & Mfg. (supra) against which the appeal is dismissed by the Hon'ble Supreme Court, the unaccounted goods lying within the factory are liable for confiscation. The impugned order is set aside and the appeal filed by the Revenue is allowed and the order passed by the adjudicating authority is restored.

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