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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-2005

Reported in : (2005)(188)ELT307TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Rajender Sharma

Respondent : Commissioner of Central Excise

Judgement :
2. The appellant filed these appeals against common adjudication order passed by the Commissioner of Central Excise whereby by penalty of Rs. 2 lakhs each was imposed under Rule 209A of Central Excise Rules. The appellants are the Directors of M/s. Mannu Plastic Industries (P) Ltd. A show cause notice was issued to M/s. Mannu Plastic Industries and Mannu Electrical Ltd. on the ground that M/s. Mannu Plastic Ltd. issued 96 invoices showing the clearances of plastic PVC compounds on the basis of which M/s. Mannu Electrical Ltd. availed the benefit of credit. During investigation, it was found that only invoices were issued, no input was cleared by the M/s. Mannu Plastic Ltd. and no input is received by M/s. Mannu Electrical Ltd. The adjudicating authority confirmed the demand denying the benefit of Modvat credit and also imposed penalties on the present appellants.

3. Ld. Counsel appearing on behalf of Shri Anil Kumar appellant submitted that he was appointed as a Director in M/s. Mannu Plastic industries Ltd. and he resigned

on 7-8-1995. The counsel also produced photo copy of the resignation letter. It is also submitted that the resignation letter was submitted to the competent authority under the Companies Act, 1956. The contention is that the period of demand is 28-8-1995 to September, 1996 as the appellant Shri Anil Kumar resigned prior to this, therefore, he cannot be liable for penal action under Rule 209A of Central Excise Rules.

4. On behalf of other appellants, the contention is that they were Directors only on papers in fact, the real owner was Rajesh Jain and Shri Ramesh Chand was an employee and paid monthly salary of Rs. 3,000/- P.M. and also forced to sign as Director on some papers. The contention on behalf of the appellant is also that he was only Director on papers only he never visited the factory nor participated in any activity in the management of the firm.

5. The contention of the Revenue is that they are the Director of M/s.

Mannu Plastic Ltd. and M/s. Mannu Plastic issued bogus invoices on the strength on which M/s. Mannu Electricals Ltd. availed the credit. In these circumstances, all the Directors are liable for penal action as they acted in a way which leads to evasion of duty.

6. We find that Shri Anil Kumar was the Director of M/s. Mannu Plastic up to 7-8-1995. On 7-8-1995 Shri Anil Kumar resigned and resignation was accepted on the same date and which was forwarded to the authority under Companies Act under the proper form, in the present case, the demand is for the period 28-8-1995 to September, 1996 as Shri Anil Kumar was not the Director of M/s. Mannu Plastic during the period in dispute, therefore, he cannot be liable for penal action. The appeal filed by Shri Anil Kumar is allowed.

7. In respect of other appeals filed by Shri Rajender Sharma and Shri Ramesh Chand both were Directors during the period in dispute. They cannot say that they are Directors on papers, they had participated in the management, and were Directors of the firm during the relevant period. They are responsible for the actions of M/s. Mannu Plastic Ltd. During their tenure, 96 invoices were issued without clearing the goods on the strength of which M/s. Mannu Electricals Ltd.

availed the unlawful credit. In this situation, we find no infirmity in the impugned order whereby it is held that they are liable for penal action. However, taking into the facts and circumstances of the case the penalty is reduced to Rs. 50,000/- each otherwise the impugned order is upheld in respect of these appellants. The appeals are disposed of as indicated above.