Commissioner of Central Excise Vs. Amrit Dye Chem. Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-09-2005

Reported in : (2005)(187)ELT231Tri(Mum.)bai

Judge : A Wadhwa

Appellant : Commissioner of Central Excise

Respondent : Amrit Dye Chem. Industries

Judgement :

1. Revenue being aggrieved with the order passed by the Commissioner (Appeals), vide which he has set aside the confiscation of the goods and has reduced the penalty, has filed the present appeal.

2. The respondents are engaged in the manufacture of organic chemicals.

Their factory was visited by the Central Excise Officers on 24-11-94, who conducted various checks and verifications and found excess quantity of their final products, which was not entered in RG-1 register. Accordingly, proceedings were initiated against them, which resulted in an order passed by the Assistant Commissioner confiscating the goods with an option to the appellants to redeem the same on payment of fine of Rs. 10,000/-. Personal penalty of Rs. 2500/- and Rs. 1500/- was imposed upon the appellant's authorised representative.

3. On an appeal against the above order, the Commissioner (Appeals) set aside the confiscation and also reduced the personal penalty. While doing so, he

observed as under :- "As regards non-accountal of excess quantity, I find that nearly 95% of their total production is being exported out of India. Moreover, purity of the materials has got to be tested as per (he specifications of their buyer. I find much force in the plea put forth by the appellant and as such the goods could not be accounted for in the RG1 register. I have also seen that the goods were seized within the factory premises and there is no allegation in the show cause notice for clandestine removal and therefore merely because the goods were not entered in the RG1 register, confiscation is not sustainable and therefore, 1 set aside the fine imposed in lie of confiscation.

Having regards to the facts, I find that there is an offence for non-accounting of finished product. There is a breach of Rule. Being responsible person of the unit, the adjudicating authority have imposed penalty on Shri V.A. Madia, Vahivatkarta, and Shri Devjibhai Patel, Excise Clerk cum authorised signatory of the unit under Rule 209-A and 173Q(i). However, I take lenient view and reduce the penalty from Rs. 2500/- and Rs. 1500/- to Rs. 1500/- and Rs. 500/- respectively".

4. In their appeal memo, the revenue has not referred to any evidence showing that the goods in question were meant for clandestine removal or there is any evidence to show that if not detected, the respondents would have cleared the goods without payment of duty. In this view of the matter, I fully agree with the Commissioner (Appeals)'s observation and finding. The appeal filed by the revenue is accordingly set aside.