

J.V. Strips Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-2005

Reported in : (2006)(194)ELT237TriDel

Judge : S Kang, Vice-, N T C.N.B.

Appellant : J.V. Strips Ltd.

Respondent : Commissioner of Central Excise

Judgement :

2. The brief facts of the case are that appellants are engaged in the manufacture of C.R. sheets/Strips from HR Coils. On 9-9-99, the officers of the Revenue visited the residential premises of the Director Shri Krishan Bindal and recovered an amount of Rs. 11,00,000/- that was seized on the reasonable belief that which is liable for confiscation as it relates to the clearance of Excisable goods without payment of duty. The certain documents were also recovered from the premises of the Director Shri Krishan Bindal, which shows the receipt of raw material and physical stock available on the particular day. The comparison of the stock of raw material as recorded in the statutory record with the documents recovered from the Director shows that during the period 1-4-99 to 31-8-99 the appellants did not count for 1719.535 MT of raw material i.e., H.R. Coils. The document recovered from the premises of the Director also contains details of finished goods showing the specification etc. which were not shown to be cleared on payment of duty in the statutory record.

3. Show cause notice was issued to the appellants and, thereafter, Adjudicating authority confirmed the demand of Rs. 52,37,731/- and also imposed the penalty of the equal amount under Section 11 AC of the Act.

The amount recovered from the premises of the Director was also confiscated and personal penalties were also imposed on the appellants.

4. The contention of the appellants in respect of the excess receipt of inputs is that the Revenue had taken into consideration the closing balance on 31-3-99, whereas slips recovered from the Director mentioned stock position as on 1-4-99. The appellants on 1-4-99 received 218.690 MT quantity of inputs which is shown in the physical stock as on 1-4-99 and the total quantity does not include the quantity of inputs, which is issued for the manufacture of final product and lying in the factory at various stages of manufacture. The appellants also pleaded that in respect of the Second slip where the stock position as on 30-6-99 was taken into consideration, whereas the slip recovered from the Director mentioned the stock position as on 1-7-99. The contention is that quantity of 116.610 MT was received on 1-7-99, which is mentioned in the statutory record and were not taken into consideration by the Revenue. Similar arguments are raised in the receipt of 3rd slip, where the stock position as on 31-8-99 was taken into consideration and inputs received on 1-9-99 was not taken into consideration. The contention of the appellants is also that the Director Shri Bindal in his statement specifically mentioned that the quantity mentioned in the loose slips is on approximate basis.

5. In respect of the entry made in the private record regarding finished goods, the contention of the appellants is that they had cleared all the goods mentioned in the loose slips on payment of duty and only difference is that goods were cleared to the other customers than the customers whose name is mentioned in the loose slips. The appellants produced the details of the duty paying documents showing the clearance of the goods on payment of duty, which were mentioned, in the loose slips.

6. In respect of the currency recovered from the premises of the Director that the appellants duly clarified the source of this amount and in subsequent statement, the Director also explained the source of the amount in question.

7. The contention of the appellants is also that in the Adjudication order reliance is placed on the movement of registered Trucks of the appellant's Firm. The contention is that the movement of trucks cannot prove the fact that every time when the trucks are going out of the factory were carrying finished goods. The trucks may be moved out of the factory without any goods for bringing the inputs or for other purposes the truck can also go out of the factory. There is no evidence oral or documentary to show that whenever the trucks were going out of the factory, were carrying the finished goods.

8. The contention of the Revenue is that the private record recovered from the appellant shows the stock position, which is much higher as recorded in the statutory record. This record shows that 1248.260 MT of excess quantity of the inputs received during the relevant period and there is no explanation on the part of the appellants regarding this excess quantity mentioned in the slips recovered from the premises of the Director. Regarding the quantity of the finished goods mentioned in the private record, the contention is that as appellants were not counting for the exact quantity of raw material received in the factory, therefore, the excess raw material received in the factory is used in the manufacture of final product which not mentioned in the statutory record and cleared without payment of duty. In respect of the currency recovered from the premises of the Director, the contention of the Revenue is that at the time of visit, the appellants failed to show the source of this currency, therefore, it is rightly confiscated.

9. We find in this case certain loose slips were recovered from the Director of the Firm. The quantity of inputs mentioned in the loose slips when it compared with the statutory record, it was found that appellants received certain excess quantity of inputs. The quantity mentioned in the slips and the quantity mentioned in the statutory record is as under:

No.	Slip No. & Date (File Qty. of Input Qty. as per Excess No. 1 to Panchnama shown as Form-IV Reg- Qty. not dated 9-9-99 at An- Physical stock ister accounted nexure A2 to SCN) (M.T.)	as	under

166 2700 2180.100 519.900 1-4-992.

123 2357.940 1959.770 398.17 as on 1-7-993.

154 1697.380 1585.145 112.235 31-8-99 The contention of the appellants in this regard is that the Revenue while calculating the difference in the quantity taken into the consideration, the closing Balance as on 31-3-99, whereas in the slips the quantity of the stock was mentioned as on 1-4-99 and the quantity of inputs removed on 1-4-99 was not taken into consideration.

10. On 1-4-99, appellants received 218.610 MT of the inputs, which is duly entered in the statutory record and this quantity is not taken into consideration. Similarly, in respect of the Slip No. 123, dated 1-7-99, the quantity of 116.610 MT removed on 1-7-99 was not taken into consideration. Similar situation is in respect of the Slip No. 154, dated 31-8-99 whereby the quantity of 1697.380 MT issued for manufacture of final product on 29/30/31-8-99 was not taken into consideration. In respect of receipt 157 to 164, the Revenue had taken the opening stock only quantity of 1887.370 MT as on 1-8-99, whereas the opening balance on that day was 2057.520 MT. The Revenue admits this factual position during the course of arguments. The contention of the Revenue even after accepting this factual position that there is still some difference in the loose slips and in the quantity of inputs mentioned in the statutory record. In this regard, we find that the Director Shri Krishan Bindal in his first statement before the Revenue authorities specifically mentioned that the entries made in the private record is only on the approximate basis and this fact is not controverted by the Revenue. Further, we find that the quantity of inputs which were issued for the manufacture of final product and which is still lying in the factory is not taken into consideration while arriving at the actual position regarding availability the actual quantity of the inputs in the factory.

11. In respect of the quantity of finished goods mentioned in the private record, the appellants produced the detailed Chart showing the clearance of the goods on payment of duty though there are certain discrepancies in respect of the names of the customers. We found that the name of the customer is mentioned as 'Anupam' in the private record, whereas the same goods were cleared to Girza Steel on

payment of duty. Similarly appellants explained the entries made in the private record showing the clearance of the final product on payment of duty.

In this situation the demand on account of receipt of excess raw material and clearance of finished goods without duty is not sustainable.

12. In respect of the currency seized from the premises of the Director, we find that the currency was confiscated on the presumption that it relates to the clearance of the excisable goods without payment of duty. The appellant explained the source of receipt of money. As discussed above, as we are holding that there was no shortage of the inputs and there was no clearance of final product without payment of duty, therefore, the order in respect of confiscation of currency is also not sustainable. The impugned order is set aside and the appeals are allowed.

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