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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-21-2005

Judge : P Bajaj

Appellant : Cce

Respondent : Gajra Gears Pvt. Ltd.

Judgement :

1. In this appeal the Revenue has contested the correctness of the impugned Order vide which the Commissioner (Appeals) has set aside the confiscation of excess goods found in the factory of the Respondents, dropped the redemption fine and penalty under Section 11AC of the Act.

I have heard learned JDR. Shri S. Mani appearing on behalf of the Respondents, has requested for decision on merit.

2. From the record it is evident that the factory premises of the Respondents was visited by the Officers on 5.9.97 and during the course of physical verification of the stock, finished goods were found short involving duty of Rs. 17,442/- and 2,19,450/-. This shortage was accepted by the Respondents and they deposited the duty. Similarly certain goods were found in excess which wore not entered in RG-1 register and the same were seized. The Adjudicating Authority confirmed the duty demand and imposed penal y of equal amount under Section 11AC.That authority also disallowed the Modvat Credit and ordered confiscation of the goods, imposed redemption fine of Rs. 15,000/-, besides imposing penalty of Rs. 15,000/-

under Section 173Q. The Commissioner (Appeals) has confirmed the duty against the Respondents, but dropped the penalty against them under Section 11AC, and set aside the confiscation of the excess goods, reduced the penalty from Rs. 15,000/- to Rs. 10,000/- under Rule 173Q.3. After having affirmed the Order-in-Original regarding confirmation of duty amount against the respondents, the Commissioner (Appeals) could not set aside the penalties. The impugned Order in this regard is legally not maintainable and deserves to be modified. The Adjudicating Authority imposed penalties of Rs. 17,442/- and 2,19,450/-in respect of short found goods. But keeping in view the facts and circumstances of the case and payment of duty by the Respondents, both these penalties are reduced to Rs. 10,000/- and 50,000/- respectively. Similarly the impugned Order regarding setting aside of confiscation of the excess goods, found in the factory of the respondents, is not legally sustainable. The Respondents did not contest the fact that the goods were found in excess in their factory which were not accounted for in their RG-1 register. Therefore, those goods were liable to be confiscated under the law. The impugned Order in this regard is set aside and the Order of the Adjudicating Authority is restored. However, the redemption fine, keeping in view the duty involved on those goods, is reduced to Rs. 10,000/-. However, no interference in the reduction of penalty made by the Commissioner (Appeals) from Rs. 15,000/- to Rs. 10,000/- under Rule 173Q is called for the impugned Order accordingly stands modified. The appeal of the Revenue stands disposed in above terms.