

Anil Dang Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-27-2005

Reported in : (2005)(189)ELT98Tri(Mum.)bai

Judge : A Wadhwa

Appellant : Anil Dang

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants are engaged in the manufacture of printed laminated Film Rolls falling under Chapter 39. The appellant's factory was visited by the Central Excise officers on 27-3-2002, and on verification of the stock, it was found that the quantity of 40,147 of the said goods totally valued at Rs. 57,05,190/- was in excess than the record balance. It was also noticed that the said goods were fully packed and in ready to despatch condition. Production slips in the said goods were destroyed by the appellant. Inasmuch as the goods were not entered in RG-1 register, the same were seized.

2. As a follow up action, their transporters premises was also searched. 9,120 Kg of rolls meant for gutka manufactures was found lying there. The statement of Shri Manjay Shukla, transporter's authorised representative was recorded deposing that the goods in question have been received from the appellant without the cover of any duty paying documents. Further, Shri Nitin Mali, proprietor of the transporters company also admitted that the goods belonging to the appellant and

was received by them without proper duty paying documents. The said goods were also seized by the officers.

3. On the above basis, proceedings were initiated against the appellant by way of issuance of show cause notice which culminated into an order passed by Assistant Commissioner vide which he confirmed the demand of duty of Rs. 2,57,880/- against the manufacture in respect of the goods found at the transporter's premises on the finding that the same were cleared clandestinely by the appellant. He also confiscated the excess found goods in the appellant's premises with an option to the appellant to redeem the same on payment of redemption fine of Rs. 2 lakhs.

Penalty of Rs. 10,000/- was imposed on Shri Anil Dang, Chairman cum Managing Director of the assessee's company along with the imposition of personal penalty of Rs. 5,000/- upon Shri Nitin Mali, proprietor of the transporter's company. The appeals against the above order did not succeed before the Commissioner (Appeals). Hence the present appeals.

4. I have heard Shri D.H. Nankani, Id. Advocate appearing for the appellant and Shri A.K. Saxena, Id. DR appearing for the revenue.

5. As regards the excess found goods, it is the appellant's plea that the goods were not fully manufactured and as such not ripe for their entry in RG-1 records. They also referred to various decision which are to the effect that confiscation of the goods for non-entry in the statutory records is not justified, when the same are within the factory premises. Specific attention has been drawn to the Tribunal's decision in the case of Bhillai Conductors reported in 2000 (125) E.L.T. 781. However, I find that in this case, at the time of their seizure, the goods were found to be "in packed condition" and 'in ready to despatch condition'. The above was also admitted by the appellant's authorised representative in their statements. As such, I find no justification to accept the belated explanation by the manufacturer that the goods were intermediate goods and not finished goods. The ratio of the Larger Bench in the case of Billai Conductors is to the effect that final product not entered in RG-1 should not be ordinarily; confiscated unless there is some evidence to show that they were under the process of being removed without

payment of duty. In the present case, there is a clear finding by the authorities below that the goods were in ready to despatch condition, which findings has not been effectively rebutted by the appellant. As such, I hold that the confiscation of the goods was justified. However, keeping in view the facts and circumstances of the case I reduce the redemption fine from Rs. 2 lakhs to Rs. 50,000/- (Rupees Fifty Thousand Only).

6. As regards the confirmation of the demand of duty of Rs. 2,57,880/-in respect of the goods found at the transporter's premises, the appellant have contested that the goods were not manufactured and cleared by them. They have stated that the appellants are the manufacturer of Plastic flexible laminated packaging film and not laminated rolls for gutka. They have also taken a categorical stand that the goods were manufactured by Sanket Foods Factories Pvt. Ltd. and there is no evidence to show that the goods, in fact, were manufactured by them. I find force in the above contention of the appellant. It is seen that there was no indication on the goods seized from the transporter's premises as regards the manufacturer of the same. Similarly, no batch no. etc was -written on the said rolls so as to link them with the appellant's clearances. No evidence in the shape of packing slips or some private records was found from the appellant's factory so as to link the goods found in the transporter's premises with the appellant. The statement of transporter's proprietor and authorised representative, cannot be made sole basis for holding the goods as having been manufactured and cleared by the appellant, in the absence of corroboration by any independent evidence. The statements of the appellant's representative are to the effect that their finished product are different from laminated rolls for gutkas, which is seized material from the transporter's premises. As such, I do not find any justifiable reason to confirm the demand of duty against the appellant.

7. It is also seen that no personal penalty has been imposed upon the manufacturing unit. Personal penalty of Rs. 10,000/- and Rs. 5,000/- imposed upon Shri Dang and Shri Nitin Mali under the provision of Rule 26 of the Central Excise Rules, 2002 are however set aside.