

Supreme Enterprises Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-28-2005

Reported in : (2005)(190)ELT411TriDel

Judge : P Bajaj

Appellant : Supreme Enterprises

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal, the appellants have contested the correctness of the impugned order, vide which the Commissioner (Appeals) has confirmed the order-in-original of the adjudicating authority regarding confiscation of the goods and imposition of penalty as detailed therein, on the appellants.

3. The record shows that the appellants are dealing with Aromatic Chemicals. On 1-10-2001, on receipt of an information that a consignment of 12 packages weighing about 300 kgs. of non-duty paid 'Sandal Wood Oil' booked from Kolhapur to Kanpur through M/s. GATI Ltd. in the guise Aromatic Chemical, was lying in the godown to M/s. GATI Ltd. conducted the raid. The officer-incharge M/s. GATI Ltd. Shri M.K.Mukerjee, however, produced the relevant documents and invoices of M/s.

Sanjay Laxman Gaikwar of Sangli, Maharashtra alongwith dockets and photocopy of Form C, before the officers. The samples were drawn from those packages and

sent for tests to the I.I.T., Kanpur. The officer, who conducted the tests, gave his report dated 16-10-2001 that the samples were of Sandal Wood Oil, but the appellants, thereafter, requested the I.I.T., Kanpur for retest of all the samples. They also made similar request to the adjudicating authority for getting the samples re-tested, during the adjudicating proceedings. The record also shows that the re-test report was submitted by the I.I.T., Kanpur on 7-6-2002 after carrying G.C.M.S. test. In that report, it was opined that the samples were not of Sandal Wood Oil but of contaminated oil.

The Revenue, thereafter, took up the matter with the officer, who carried out the tests for explaining his conduct of carrying out the re-test without their permission and also put certain queries to check the genuineness of the second report. That letter was duly answered by the officer of the I.I.T., Kanpur. The queries put to him were also explained by him. The perusal of his letter shows that he carried the first test and gave report on 16-10-2001 but explained that at that time the test carried out was not of GCMS but of NMR, which was not the conclusive test and that the test of GCMS could not be carried at that time as the machine was out of order. He had also mentioned in that letter that while handing over the report dated 16-10-2001, this fact was conveyed to the Department. He had justified the correctness of his second test report dated 7-6-2002, after carrying out the GCMS test and according to his report, the samples were not of the Sandal Wood Oil.

On receipt of his report, no attempt was made by the Revenue to get the samples tested from any other independent laboratory. Therefore, the second test report of the laboratory officer of the I.I.T., Kanpur deserves to be accepted. The earlier report, in fact, stood superseded by the latest report. There is no other evidence on the record to falsify the second report of I.I.T., Kanpur. Therefore, the findings of the authorities below that the goods covered by the invoices were Sandal Wood Oil, cannot be sustained. The argument of the learned JDR that since the appellants got the goods provisionally released by accepting the same as Sandal Wood Oil, and as such the same should be accepted as Sandal Wood Oil is only misconceived. The goods were got released by the appellants provisionally and they, from the very beginning, had contested the version of the Revenue that the goods were Sandal Wood Oil. In the invoices issued to them by M/s. Sanjay

Laxman Gaikwad, the description of the goods, was Aromatic Chemical.

4. The goods had been received by the appellants under the cover of invoice No. 94 dated 26-9-2001 of M/s. Sanjay Laxman Gaikwar, Maharashtra. These goods were manufactured and cleared by the said firm, as even alleged in show cause notice. Earlier to this also, the said firm cleared the goods in favour of the appellants as alleged in para 9 of the show cause notice. Therefore, the findings of the authorities below that the said firm was found to be fictitious, none existent based on the alleged report made by the field officers, cannot at all be accepted to be correct. No duty demand against the said firm had been raised in the show cause notice for having cleared the goods without payment of duty. The duty demand in the show cause notice has been demanded in general terms from a manufacture, whosoever may be, who had manufactured the goods and in the alternative it had demanded from the appellants. When the Revenue knew the name of the manufacturer of the goods, then the duty demand was to be specifically raised from him by name. Legally, no duty demand can be raised against the appellants being neither the manufacturer nor the traders of the goods.

They had received the goods under the cover of invoice. Therefore, the confiscation of the goods, seized from their premises, under these circumstances, could not be legally ordered by the authorities below.

Similarly, no penalty could be imposed on them.

5. In the light of discussion made above, impugned order is set aside and the appeal of the appellants is allowed with consequential relief as per law.

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