

Cce Vs. Dicks Laboratories Ltd.

Cce Vs. Dicks Laboratories Ltd.

SooperKanoon Citation : sooperkanoon.com/39709

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-2005

Reported in : (2005)(102)ECC382

Judge : P Bajaj, M T K.C.

Appellant : Cce

Respondent : Dicks Laboratories Ltd.

Judgement :

1. In this appeal the revenue has contested the correctness of the impugned Order-in-Appeal vide which the Ld. Commissioner(Appeals) has dropped the duty demand and set aside the confiscation of the unaccounted goods. None has appeared on behalf of the respondents. No request for adjournment has also been received from them, therefore, we proceed to decide the appeal after hearing Ld. DR.2. From the record it is evident that the respondents during the relevant period were engaged in the manufacture of excisable goods.

They used logo belonging to another person on their products. At the time of visit to the factory by the Central Excise Officers on 29.1.96, certain goods were also found lying unaccounted and those were seized.

After serving SCN to them, the adjudicating authority confirmed the duty demand by denying the benefit of SSI exemption notification, for having cleared the goods under the brand name of another person. That authority also ordered the

confiscation of the seized goods and imposed penalty under Rule 173Q on the respondents.

3. Ld. Commissioner (Appeals) has reversed the order of the adjudicating authority by observing that the use of logo/House Mark of M/s. Prem (another person) on the goods could not disentitle the respondents from SSI exemption as they were using their brand name also. But the view taken up by him cannot be accepted being contrary to the ratio of law laid down by the Apex Court in the case of CCE, Tricky v. Gmsini Industries Ltd., 2005 (99) ECC 713 wherein it has been observed that the use of logo of another person would disentitle the assessee for claiming the exemption.

4. Similarly the view of the Ld. Commissioner (Appeals) that the goods were not liable to be confiscated and the case was covered by Rule 226 of the Rules as there was only non-maintenance of the proper record by the respondents, cannot be accepted being erroneous in law. The non-accountal of the seized goods had not been disputed by the respondents, therefore, the confiscation of the goods was rightly ordered by the adjudicating authority under Rule 173Q. It is not a case of mere non-maintenance of proper record by the respondents, but is a case where they failed to account for the goods in their record.

Moreover, even under Rule 226, confiscation of the non-accountal goods is provided and Ld. Commissioner (Appeals) could not set aside the confiscation of the goods and imposition of redemption fine on the respondents. Therefore, the impugned order in this regard cannot be sustained. In the light of the above discussions, the impugned order is set aside and the Order-in-Original is restored. Appeal of the revenue accordingly stands accepted.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com