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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-2005

Reported in : (2005)(190)ELT381TriDel

Judge : P Bajaj

Appellant : Plastic Duniya

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal the appellants have challenged the impugned order-in-appeal vide which the Commissioner (Appeals) has affirmed the order-in-original regarding the duty and penalty against the appellants.

2. I have heard both the sides and gone through the record. At the relevant time the appellants were engaged in the manufacture of Plastic Parts of Motor Vehicles, Telephone, Switch gear, computers etc. The duty of the disputed amount has been confirmed against the appellants on account of shortage of the finished goods as against the balance recorded in the R.G.I, register/stock register detected by the officers of the Central Excise on 30-7-99. The evidence relied upon by the revenue regarding shortage of the finished goods, is the statement of Shri Dewak Kapoor, Production Incharge and Shri Raj Kumar Aggarwal, Partner. Shri Dewak Kapoor was present at the time of visit of the officers to the factory of the appellants and he attested the Panchnama wherein the shortage of the finished goods was recorded. But in his separate statement recorded by the

officers at the spot, he did not admit the shortage of the finished goods at all. His statement appears to have been misread by the revenue. As even in the SCN, it has been mentioned that he had admitted the shortage of the finished goods and the authorities below both have also in their orders so recorded, but it is factually not so, as in his statement he did not make such admission. Simple attestation of the Panchnama as a witness by him, which was prepared by the officer at the spot, could not lead a conclusion that he had admitted the shortage of the finished goods, specially when such an admission is missing in his statement recorded alongwith the Panchnama at the spot. Therefore, his statement did not advance the case of the revenue for proving the shortage of the goods in the factory premises of the appellants.

3. The statement of Shri Raj Kumar Aggarwal, Partner of the appellants who in his statement had allegedly admitted the shortage of the finished goods, was not present at the time of the visit of the officers. The Panchnama prepared at the spot did not bear his signatures in token of its correctness. His statement was recorded only on 17-8-99 wherein he narrated the facts regarding the visit of the officers to the factory and preparation of the Panchnama by them detailing the shortage of the goods, as disclosed to him by his Production Manager Shri Dewak Kapoor. Even his alleged admission for holding him personally liable for penalty under Rule 209A has not been accepted by the authorities below to be a sufficient evidence under the law, as he had been absolved of his liability under the said rule. That being so, the same could not be taken to be a conclusive proof against the appellant's company for confirming duty. The appellant's company in order to test the correctness of the Panchnama, sought the cross-examination of the panch witnesses, but the same was declined by the adjudicating authority on the ground that Shri Dewak Kapoor and Shri R.K. Aggarwal had admitted the shortage, whereas it was not so and the appellant's company could not be denied their legitimate right to cross-examine the panch witnesses in order to question their veracity and credibility. Therefore, the contents of the panchnama regarding the shortages of the goods found by the officers in the factory, could not be accepted as a conclusive evidence for confirming the duty demand against the appellant's company. There is no tangible evidence to prove the clandestine removal of the alleged short found goods, by the appellants. Even the plea taken by the

appellants in reply to SCN that alleged short found goods being defective, were taken for use in the factory has not been considered by the authorities below. In the absence of evidence of clandestine removal of the goods on their part, their plea could not be brushed aside without having sufficient cause, by the authorities below. The initial burden was on the revenue to prove the allegations as contained in the SCN against the appellants for raising the duty. But having failed to discharge this burden, the duty has been wrongly confirmed against them by the axithorities below.

Consequently, the impugned order is set aside and appeal of the appellants is allowed with consequential relief as per law.

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