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Mahabir Steels Tubes Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-28-2005

Judge : S Kang, Vice

Appellant : Mahabir Steels Tubes

Respondent : Cce

Judgement :

1. Heard both sides. Appellants filed this apeal against the order in appeal passed by the Commissioner (Appeals).

2. Brief facts of the case are that appellants are engaged in the manufacture of M.S. Pipes. The Revenue authority visited the manufacturing premise of the appellant on 22.01.2001. On verification of the stock, it was found that there was a shortage of 14.700 M.T M.S.Pipes and there is also the shortage of 5.0500 M.T. of M.S. Scrap. A show cause notice was issued to the appellant demanding duty and for imposing of penalty. The Adjudicating authority confirmed the demand-imposed penalty. The Commissioner (Appeals) dismissed the appeal filed by the appellants.

3. The contention of the appellants is that entry made in the RG-I record showing balance of the final product and M.S. Scrap made in haste and due to negligence of their concerned employee, the actual production of M.S. Pipes and scrap was to mention correctly. The submission is that in fact there is no shortage of their final product and scrap. The contention is also that there is no shortage of their final

product and scrap. The contention is also that there is no evidence on record to show that appellants had cleared their final products and scrap with clandestine removal. Therefore, the demand is not sustainable. The appellant also submitted that duty has been paid prior to issuance of the show cause notice. Therefore, the imposition of penalty is not sustainable.

4. The contention of the Revenue is that on the date of visit, the appellants admitted the shortage and partner of the Firm in his statement before the Revenue Officer submitted that he is not able to explain the shortage and he will explain subsequently. The contention is that after the statement, the appellant had not given any explanation regarding this shortage. The shortage was found in respect of the final product and scrap. The contention of the appellant is that due to haste, the entries were made in the statutory record and de to the negligence of their staff excess production was recorded in the statutory record. In support of this plea appellant has not produced any evidence by way of private record showing the actual production and explaining of this mistake as happened. In these circumstances, the demand in respect of the goods found short is rightly made. In respect of the imposition of penalty, the contention is that the Tribunal is the case of C.C.E, Coimbatore v. A.L. Matheswara Lorry Service. In this case the Tribunal held that in the case voluntarily deposited of duty, the penalty under Section 11AC of the Act is not sustainable.

5. In the present case, there is no voluntarily deposit of duty. It is not he case of the appellant that they had detected the mistake and paid duty prior to issuance of show cause notice at their own. It is only when the Revenue officers detected the shortage and appellant tried to explain the shortage also deposited the shortage and appellant tried to explain the Shortage also deposited the duty. Therefore, the ratio of the above decision of the Tribunal is not applicable to the above case. The appeal is dismissed.

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