

Pack Point Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-11-2005

Judge : M Ravindran

Appellant : Pack Point

Respondent : Commissioner of Central Excise

Judgement :

1. Brief facts of the case are that the officers of the Central Excise Department visited the factory of the appellants and on stocking taking found that there was shortages of finished goods and inputs as compared to the statutory record. Based on these finding a show cause notice was issued to the appellant demanding the duty on the shortage of finished goods as well as on the inputs. The appellants replied to the show cause notice and explained their stand stating that the shortage of the finished goods was an outcome of presumption by the officers who visited their factory premises and the appellants also contended that the shortage of the inputs was due to inputs having been consumed in the manufacturing of the finished goods as well as in process goods lying in stock. The Adjudicating Authority on adjudication in its order-in-original dropped the demand of the duty on the shortages of the finished goods but confirmed the demand on the shortages of inputs.

On an appeal the Commissioner (Appeals) upheld the order-in-original, hence, this appeal.

2. The learned Counsel for the appellants submitted that the shortage of inputs is due to the reason that said inputs were being used in the manufacture of finished goods and also the fact that the goods in process were not considered by the officers, adjudicating authority, and the appellate authority. The learned Counsel also submitted that the error or the shortage of the inputs was also due to the reason that the entries in the statutory books of account i.e. RG-23A, Pt. I was not updated for 4/5 days. He also relies upon the decision of this Tribunal in the case of Icycold Commercial Enterprises v. CCE, Calcutta , and Orient Cement v. CCE, Hyderabad and vehemently states that to prove the clandestine removal of inputs the department has not put forth any evidence.

3. Learned SDR on the other hand submits that the unit being an SRP unit are required to maintain the stock record correctly and the onus is cast upon them to keep the record updated, failure of which demand of duty is attributed to them. He also submits that the statement of partner and the panchnama as recorded at the time of visits of the officers were not retracted and there is an admission in respect of shortage of inputs. He also submitted that they are not giving any documentary evidence in support of their claim. He relies upon the following decisions :-CCE, Indore v. Caps & Caps (P) Ltd. 4. I have considered the submissions of both the sides and perused the record. It is seen from the show cause notice that the demand for the shortage of finished goods was arrived, based upon the presumption and assumption and the shortage of inputs was also linked to such shortage of finished goods. It was alleged in the show cause notice that the finished goods which was found short have been clandestinely removed, and hence the shortage of inputs was also linked to the said shortage of finished goods. The tenor of the show cause notice is very clearly linking the shortage of inputs to the clandestine removal of finished goods which was found short. The Adjudicating Authority has dropped the charges of shortage of finished goods accepting the plea of the appellants that the said shortage was on presumptive ground. It is noticed that he did not accept the fact that inputs which were found short were or would have been issued for the manufacture of the finished goods which were in the process, during the time of visit of the officers. Panchnama drawn by the officers do not show any stock of in-process material lying in the appellants unit at the same time the appellants have been right from the reply to

the show cause notice stage and in the statement have been taking a stand that the stock of under process should be considered for negating the allegation of shortage of inputs. The Commissioner (Appeals) has also not considered this plea by the appellants and in spite of appellants' contention before him that the entries made in RG-23A, Pt. I were incomplete and if this would have been reconciled by the officers along with the stock of in-processed goods there would be no shortage of inputs. The Commissioner (Appeals) has totally overlooked this important aspect and has upheld the order. It is also further seen that the department has not adduced any evidence in respect of clandestine removal of the inputs. Mere assertion by the authorities that shortage of inputs tantamounts to clandestine removal is not enough. A clandestine removal has to be proved and should be proved beyond doubt. I rely upon the decision of this Tribunal in the case of Icyold Commercial Enterprises (supra) in which it is held that "clandestine removal is a positive act and burden of proving is on the department - Note provable merely on conjectures and presumptions". The fact of clandestine removal in this case is not proved by the department and hence the ratio as laid down by this Tribunal is applicable in this case.

5. In view of the above I allow the appeal and set aside the impugned Order with consequential relief, if any, to the appellants.

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