

Pnp Castings (P) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-12-2005

Judge : R Abichandani

Appellant : Pnp Castings (P) Ltd.

Respondent : Cce

Judgement :

1. The appellant challenges the order of the Commissioner (Appeals) dated 30.8.2004, dismissing its appeal and upholding the order of the Joint Commissioner, Central Excise, Lucknow, made on 30.5.2003 confiscating the seized goods under Rule 25 of the Central Excise Rules, 2001, giving option to the appellant to redeem them on payment of redemption fine of Rs. 1,50,000/- and imposing a penalty of Rs. 29,623/- under Rule 25 read with Section 11 AC of the Central Excise Act, 1944.

2. The appellant was engaged in the manufacture of CI Castings falling under sub-heading 7325.10 of the Schedule to the Tariff Act. A team of the Central Excise Officers visited the manufacturing premises of the appellant on 30.8.2001 and on physical verification of the records, they found stock in excess and unaccounted for in daily stock register, as noted down in the panchnama, which was prepared on the spot. The verification was done in the presence of the Production Manager and authorized signatory of the appellant. It was found that the production/heat register of the party was written only up to 26.8.2001.

There was no entry in the production/heat register regarding pouring of any material in the furnace on 28.8.2001. The authorized signatory tried to make entries in that register to show pouring of material in respect of 28.8.2001. The officers resisted his attempt. The officers also found a stock of casting of 530 gear boxes in respect of which there was no record either in the daily stock register (RG.1), or in raw material account Form IV, or in RG.23A Part I, i.e. input account.

When this stock of castings was pointed out by the officers, the authorized signatory had stated that these were rejected castings and got them indicated in the physical stock verification report as inputs.

On being asked by the officers about the necessary evidence of its procurement as inputs or raw material, the appellant failed to show that it was not manufactured by it. The Joint Commissioner on the basis of the material on record, held that though sufficient time had elapsed before issuance of show cause notice dated 22.2.2002, the appellant had never submitted the invoice dated 30.8.2001, nor put up the plea that 530 gear boxes were purchased under that invoice. Taking note of the statement of the authorized representative that short blastings took 3 to 4 days after casting, the Joint Commissioner observed that it was not clear how even the material which was issued on 28.8.2001 could be in a final stage in the first half of 30.8.2001 after casting, blasting and grinding. It was held that the seized goods were nothing but, suppressed production and were, therefore, liable for confiscation.

3. In the appeal preferred against the order of the Joint Commissioner, the Appellate Commissioner held that there was no documentary evidence or entry to explain the presence of the gear boxes in the factory on 30.8.2001 and that the explanation which was sought to be put-forth after the show cause notice that the goods were purchased under an invoice dated 30.8.2001, was an afterthought. It was further held that it was apparent from the records and the statement dated 31.8.2001 that there was no entry made in the Production/Heat Register on 28.8.2001 when the melting was claimed to be done. Heat Register/RG 1 were written up after 22.8.2001, nor was any entry made for the finished products claimed to have been manufactured on 26.8.2001. There were also no entries for

issue of raw material after 22.8.2001 to substantiate the appellant's claim that the excess found was out of the raw material issued for melting. It was, therefore, held that the adjudicating authority had correctly found that the excess stock was unaccounted production.

4. The learned Counsel appearing for the appellant contended that the goods were not in a finished stage and therefore, they were not entered in the daily stock register on 30.8.2001. He further argued that for attracting Rule 25(b), intention to evade payment of duty was essential and since there was absence of mens rea, no penalty could have been imposed on the appellant under Rule 25 of the said rules. He also submitted that the gear boxes were purchased on 30.8.2001 and relied upon the copy of the invoice No. 70 dated 30.8.2001 issued by J.K.Steels in favour of the appellant.

4.1 The learned Counsel relied on the following decisions in support of his submissions: Tribunal Bhilai Conductors (P) Ltd. v. CCE Raipur reported 2000 (125) ELT 781 : 2000 (91) ECR 569 (T), was cited for the proposition that where there was no evidence that non-accountal of goods still in the factory was with intent to evade payment of duty, it was not sufficient to lead to confiscation or penalty under Rule 173Q of the Central Excise Rules, 1944. It will be noticed from this decision that the matter was referred to a third Member because of the difference of opinion amongst two Members and the Hon'ble Member to whom the matter was referred, held in paragraph 44 of the judgment, that it was a composite case of contravention of Rule 53 and Rule 173G which could attract only Clause (d) of Rule 173Q(1). It was held that this would read to the inference that the order of confiscation and penalty was under Clause (d) of Rule 173Q(1) and that the said order, unsupported by any finding of mens rea against the party, cannot be sustained inasmuch as mens era was sine qua non for invoking Clause (d). Commissioner of Central Excise, Raipur v. C.M. Re-Rollers and Fabricators , was cited for the proposition that non-accountal of raw material by itself was not sufficient to conclude that there was duty evasion. Kamal Plywood and Allied Inds.

P. Ltd. v. Collector of Central Excise, Meerut reported in 2002 (83) ECC 497 (Bom.) 323, was cited to point out that in a case where the goods were available in

the factory and threw as no allegation that any part of goods had been clandestinely removed, the confiscation and imposition of penalty was held to be not sustainable.

5. The learned authorized representative for the department supported the reasoning and conclusions reached by the authorities below and placed reliance on the decision of the Bombay High Court in *Kirloskar Brothers Ltd. Union of India and Ors.* reported in 2002 (83) ECC 497 (Bom.) in which the High Court, in paragraph 9 of the judgment, held that the question whether one had an intention to evade excise duty was a question of fact, and further that, Clauses (a), (b) and (c) of Sub-rule (1) of Rule 173Q (which corresponded to Clauses (a), (b) and (c) of Rule 25 did not admittedly use the expression "with intent to evade payment of duty" which was found in Clause (d) thereof. It was held that, it can, therefore, be prima facie, assumed that the liability in terms of Rule 173Q(1) Sub-clauses (a), (b) and (c) does not depend upon mens rea.

6. The material on record has clearly established that the stock which was detected was in excess and was not accounted for in the daily stock register. The stand taken up by the Production Manager in his statement that raw material was poured in the furnace on 28.8.2001, was not borne out by any evidence, nor were any entries made, in the Production/Heat register regarding pouring of any material in furnace on the said date.

The appellant did not satisfactorily explain the excess of the stock.

Under Rule 10 of the Central Excise Rules, 2001, every assessee is required to maintain proper record on a daily basis. Therefore, there was a clear violation of Rule 10. Under Rule 25(1)(b) if the manufacturer does not account for any excisable goods produced or manufactured or stored by it, such goods would be liable to confiscation and penalty can be imposed, as stipulated in the said provision. Clause (b) of Rule 25(1) does not specify requirement of any intent to evade payment of duty, as is specified in the residuary Clause (d) of Rule 25(1) which refers to contravention of any the provisions of rules of notification issued under the rules, with intent to evade payment of duty. There is, therefore, no substance in the contention that the goods could not have been confiscated or

penalty imposed for violation of Rule 10, under Rule 25(1)(b) of the said rules.

7. As regards the 530 unaccounted gear boxes, it is evident that reliance belatedly sought to be placed on the invoice dated 30.8.2001, which was admittedly not produced before the issuance of the show cause notice i.e. nearly for six months, is purely an afterthought. It appears from the invoice that 15,900 MT of scrap (gear box castings) was sold under the said invoice. The invoice does not mention the number of boxes. It only mentions the total quantity in Metric Tones and the amount. It appears from the record, that the officers had gone to the premises of the appellant in the first half of the day on 30.8.2001 and had detected the said 530 gear boxes. If the goods had reached the premises on that day, it is obvious that the Production Manager-cum Authorized Signatory of the appellant would have disclosed the fact that these 530 gear boxes were unloaded at the premises on that day.

There was absolutely no mention of 530 gear boxes having been received in the premises on that day made by the Production Manager in whose presence they were noted down in the panchnama and in respect of which he was specifically questioned.

8. The decisions of the authorities below are based on the material on record and there is absolutely no warrant for interference with the impugned order on the basis of any of the contentions raised on behalf of the appellant. At this stage, the learned Counsel for the appellant submits that the penalty imposed may be reduced. There is absolutely no warrant for reduction of the penalty. The appeal is accordingly dismissed.

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