Sudarshan Steels Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-12-2005

Judge : M Ravindran

Appellant : Sudarshan Steels

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal is against the order of the Commissioner (Appeals) upholding the imposition of the penalty on the appellants on the ground that the appellant, being a registered dealer had not brought the duty paid goods in their registered premises before selling the same to their customers an action which has violated the provisions of the law.

2. The Counsel for the appellant submits that the appellants is undoubtedly a registered dealer and he has purchased the duty paid goods for the trading. The appellant has sold these goods in the year 1997 to their customers. He also submits that their customers have given a statement that the appellants have in fact given the dealers invoice as coils'. He further submits that the appellants have been filing the returns to the authorities regularly and hence the Show Cause Notice issued to them on 7-3-2002 for the violation of the provisions, if any, is time barred. He also states that the penalty imposed under Rule 173Q(1)(bbb) read with Rule 209A is not applicable in this case. He relies upon the decision of this Tribunal in the case of C.C.E., Jalandhar v. N.V. Enterprises (P) Ltd. 2004 (176) E.L.T. 367 (Tri).

3. The learned SDR on the other hand submits that the penalty as imposed is correct in as much that the appellants being a registered dealer should have followed the provisions of the law and the conditions of the grant of the registration to him. He also submits that the appellants working under the SRP and has to follow the procedure as laid down by the provisions of the law. He relies upon the following case laws :Paramount Cable Corporation v. C.C.E., Delhi I 2002 (150) E.L.T. 528 (Tri.);C.C.E. Indore v. Caps & Caps (P) Ltd. 4. Perused the records. The appellants were a Registered dealer and trading in the duty paid goods. The appellants have issued the Invoices indicating the duty amount which were paid on the goods supplied to their customers. It is also observed that the appellants were submitting their monthly returns to the authorities regularly. There was a compliance of the appellants to that effect and the department was of aware of the functioning of the appellants from the lime the appellants were granted the Registration Certificate as a registered dealer. 1 find from the records that the appellants were issued a Show Cause Notice on 7-3-2002 directing them to show cause as why penalty be not imposed on them for the issuance of the dealers invoices without bringing the goods in their Registered premises that also for a specific period i.e. September, 1997. It is very evident that the Show Cause Notice is issued belatedly. Further I also observe that the provisions of the Rule 173Q(1)(bbb) are as follows : enters wilfully any wrong or incorrect particulars in the invoice issued for the excisable goods dealt by him with intent to facilitate the buyer to avail of credit of the duty of excise in respect of such goods which is not permissible under these rules; It may be observed from the above provisions that penalty can be imposed on the appellants under these provisions only if he intents to facilitate the buyer to avail credit of the duty of excise in respect of such goods which is not permissible under these rules. It is a undisputed fact that the goods sold by the appellant are duty paid and the appellants has not passed on more duty than due and the show cause notice also has not alleged the same. In the absence of such as allegation the penalty under Rule 173Q(1)(bbb) of the Central Excise Rules, 1944 is not imposable. Further the penalty imposable under Rule 209A of the Central Excise Rules, 1944 will also not arise as the goods were duty paid and the duty collected by the appellants from their customers were the same amount and since the duty paid goods were being sold there would be no reason

for the appellants to believe that the goods are liable for confiscation. In view of the above the appeals are allowed with consequential relief, if any.