

**Cce Vs. Diamond Industries**

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**SooperKanoon Citation :** [sooperkanoon.com/40058](http://sooperkanoon.com/40058)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-24-2005

**Reported in :** (2006)(195)ELT236TriDel

**Judge :** S Kang, Vice

**Appellant :** Cce

**Respondent :** Diamond Industries

**Judgement :**

2. Heard Id. SDR. The Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby the redemption fine in respect of the goods which were seized, was set aside on the ground that the goods were not available and these were released on provisional basis and also set aside the penalties on the ground that duty has been paid prior to issuance of show-cause notice.

3. The contention of the Revenue is that the respondents are engaged in the manufacture of Pan Masala. On 15.7.2001 the Revenue officers intercepted a Metador, which was, carried 15 bags of Gutkha without cover of any duty-paying document. The goods were seized and thereafter released on provisional basis to the respondents. The appellant could not produce any document showing the payment of duty in respect of the goods seized outside the factory. Therefore, show-cause notice was issued for confiscation of the goods and proposing demand of duty and also for imposition of penalties. The adjudicating authority

confiscated the goods and allowed the same on payment of redemption fine of Rs. 7000/- and imposed a penalty of Rs. 16,875/- on the firm.

4. The contention is that as the goods were cleared without payment of duty and were seized outside the factory, therefore, the respondent is liable for penal action under Section 11AC of Central Excise Rules and as the goods were provisionally released after seizure, therefore, setting aside the redemption fine is also not sustainable the Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Weston Components Ltd. v. CC contention is that Hon'ble Supreme Court in this case held that if the goods are not available they are still liable for confiscation.

5. In this case the Commissioner (Appeals) set aside the redemption fine and the goods are liable for confiscation these are released on provisional basis. This finding is not sustainable in view of the decision of the Hon'ble Supreme Court in the case of Weston Components Ltd. (Supra). The Hon'ble Supreme Court held that if the offending goods are not available, redemption fine can be imposed.

6. In respect of penalty as the appellant cleared the goods which were seized by the Revenue outside the factory without paying any duty, therefore, there was a clear intention on the part of the respondent to evade payment of duty. The facts of the case in the case of Rashtriya Ispat Nigam Ltd. v. CCE to the facts of the present case. In that case there was no clandestine removal of the goods manufactured by the assessee. In these circumstances, setting aside the penalty is not sustainable. In view of the above discussion, the impugned order whereby the confiscation, redemption fine and penalty were set aside is not sustainable and set aside and the order-in-original is restored. The appeal is allowed. The cross-objections are also disposed of as indicated above.

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