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Commissioner of Central Excise Vs. Arun Kumar

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-01-2005

Reported in : (2006)(193)ELT482TriDel

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Arun Kumar

Judgement :

1. This is an appeal by the Department against the Order-in-Appeal Nos.

648-649/CE/CHD/2003, dated 21-7-2003 wherein the Commissioner (Appeals) has allowed the appeal of the Managing Director of the company and set aside the penalty imposed on him by the Adjudicating Authority.

2 None appeared for the Respondent and there is a remark from the Registry that the 'notice received back'. Learned D.R. submits that since the issue involved in this case is in respect of imposition of personal penalty on the Managing Director, we could proceed ahead in the matter.

3. Since the question involved in this case is in respect of personal penalty imposed on the respondent Managing Director I take up the appeal for disposal.

4. Learned D.R. submits that the personal penalty imposed on the Managing Director of the company under Rule 209A is justifiable and is correctly imposed by

the learned Adjudicating Authority inasmuch the issue involved in this case is in respect of non-accountal of the steel tubes and pipes in the factory wherein the respondent is Managing Director. The D.R. also submits that in re- spect of appeal filed by the Department against the said company, this Hon'ble Tribunal has held that confiscation is upheld and redemption fine is imposable on the company but it was reduced and the Order-in-Appeal has been modified to that extent.

5. Perused the records. I find that the personal penalty imposed on the respondents Managing Director is under Rules 209A of the Central Excise Rules, 1944. The issue involved in this case is that a team of officers visited the company and found excess stock than what was recorded in RG-1 register and under reasonable belief the offending stock was seized and a show cause notice was issued to the company as to why this quantity should not be confiscated. Nowhere in the show cause notice there is an allegation against the respondent Managing Director that he was instrumental or he was directing the staff not to account for finished goods in RG-1 register. In the absence of any such allegation it is inconceivable that he was instrumental in directly the staff not to account for excisable goods in statutory records. Mere assertion on the part of the Adjudicating Authority that the respondent Managing Director is responsible for nonaccountal of excisable goods in statutory records would not hold good for imposition of penalty under Rule 209A of the Central Excise Rules, 1944. It is well settled in law that for imposition of Penalty under Rule 209A it has to be brought on record that the individual who acquires possession of, or is any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other maner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or rules. In this case the respondent Managing Director is not a person who handles day-to-day responsibility of accountal of the goods in statutory records. In view of the above, the appeal filed by the Department is dismissed.

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