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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-30-2005

Reported in : (2006)(195)ELT302TriDel

Judge : S Kang, Vice

Appellant : Cce

Respondent : Arsh Castings Pvt. Ltd.

Judgement :

1. The Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals). The Commissioner (Appeals) in the impugned order set aside the demand which was confirmed by the adjudicating authority on the basis of entries made in few notebooks i.e. analysis report and dispatch book of laboratory, recovered from the premises of the respondent. The Commissioner (Appeals) in the impugned order held that this private record is meant only for internal movement of goods.

2. This order is challenged by the Revenue on the ground that the findings of the Commissioner (Appeals) and this record recovered from the premises of the respondents are for internal use only is against the evidence on record. The contention is that this record is being maintained by Shri Om Parkash, chemist and he in his statement submitted that apart from preparing analysis reports he is also preparing record regarding the dispatch of the ingots. The contention is that Sh. Om Parkash in his statement admitted that dispatch register is in respect of

dispatch of ingots from the factory. The Revenue also relying upon the statement of Shri B.L. Sihag, General Manager who admitted that Shri Om Parkash was also preparing the record regarding dispatch of ingots. The contention of the Revenue is that the number of ingots mentioned in record prepared by Shri Om Parkash are much more than the ingots on which duty has been paid. The differential duty was confirmed by the adjudicating authority on the basis of ingots shown to be dispatched in the record maintained by Shri Om Parkash. The contention is that in view of this statement the impugned order is not sustainable.

3. The contention of the respondent is that Sh. Om Parkash in his statement specifically mentioned that he is also preparing the record regarding dispatch, however, he also mentioned that certain entries where the number of ingot is mentioned wee not actually dispatched. The contention of the Revenue could not find any discrepancy in the recorded balance and the actual finished goods found in the factory.

The respondent relied upon various decisions of the Tribunal whereby it has been held that charge of clandestine removal is required to be proved by production of affirmative, positive and tangible evidence and demand cannot be made solely based on a comparison of entries made in daily production amount with the entries made in RG-1 register. The respondent relied upon the following decision:Emmtax Synthetics Ltd. v. CCE 4. In this case, the show-cause notice was issued demanding duty in respect of the ingots cleared without payment of duty. The Revenue is relying upon statement of Sh. Om Parkash and analysis report and the statement of storekeeper and statement of Sh. B.L. Sihag, Works Manager. The officers of Revenue recovered two books, analysis report and dispatch book of laboratory. Regarding these books statement of Shri Om Parkash was on record who submitted that he is also maintaining record in respect of dispatch of the ingots. This fact is also admitted by Sh. B.L. Sihag, Manager, certain entries were shown to Sh. Om Parkash who admitted that these goods were tested for dispatch and he also pointed out certain entries where it was shown that these are for dispatch but actually these were not dispatched. There is nothing of record to show that physical verification regarding final product found at the time of visit which shown excess quantity of finished goods than the recorded balance. In

absence of this evidence, the demand merely on the register maintained by chemist though it may relates to the dispatch of the goods whether the goods wee cleared without payment of duty is not provided on record. Further the chemist in his statement pointed out certain entries where the goods were shown to be dispatched but actually not dispatch has been made. The Tribunal in case law relied upon by the respondent held that the charge of clandestine removal is to be required to be proved by production of affirmative, positive and tangible evidence. There is no evidence on record to show the excess procurement of the raw material, manufacture of goods which were cleared without payment of duty and excess consumption of electricity etc., in absence of this evidence, I find no infirmity in the impugned order, the appeal is dismissed.

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