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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-04-2005

Reported in : (2006)(194)ELT234TriDel

Judge : M Ravindran

Appellant : Karamveer Electronics Ltd.

Respondent : Commissioner of C. Excise

Judgement :

1. This appeal has been filed against Order-in-Appeal dated 5-9-2003 wherein redemption fine has been imposed on the Appellants on ground of excess raw material found in their factory and duty has been charged in respect of goods which were cleared by earlier company and duty has been charged on the scrap.

(i) In respect of the excess raw material found in the Appellant's factory is not correct inasmuch as the said raw material was not purchased by them, nor they have availed any Modvat credit. This raw material, in fact, was brought from unit No. 1 since in their unit as unit No. 1 was having some problem of flood. Admittedly unit No. 1 did not follow any procedure in respect of transporting this material to unit No. 2. He submits that in any case the confiscation of the goods and the subsequent redemption fine has to be imposed upon unit No. 1 and not on the appellants. He relies upon the decision of the Tribunal, and (ii) In respect of demand of duty on the clandestine removal of the goods by the earlier party he submits that the Appellants purchased the factory from M/s. Surya Industrial

Corporation. The balance sheet of the Surya Industrial Corpn. was verified with RG-1 register and the department found mis-match of sales reported by the said unit. He submits that even if any demand is to be confirmed the same, at most can be confirmed against Surya Industrial Corporation as they will be in a better position to give due explanation for the mis-match. He submits that since there is no liability arising against Surya Industrial Corpn. the Appellants are not liable to pay this duty as successor in business.

(iii) In respect of duty demand on scrap he concedes that since the amount involved is very small he is not contesting the same.

3. The learned SDR on the other hand submits that the goods which were confiscated and redemption fine imposed were, in fact, duty paid inputs of unit No. 1 and unit No. 1 availed Modvat credit on these inputs.

Hence, confiscation is right and the appellants cannot run away from the fact that the said goods were found in their factory. He further submits that since there is a clandestine removal of the goods by Surya Industrial Corpn. and the appellants has taken over the assets and liabilities of the said Surya Industrial Corpn. the appellants are liable to pay duty as confirmed on Surya Industrial Corpn.

4. I find that the confiscation of the goods from the Appellant's factory, were actually cleared by unit No. 1 without following the procedure. Unit Nos. 1 and 2 have been separately registered with the Central Excise department. Unit No. 1 had availed Modvat credit on these inputs in their unit and due to some problem of storing in their unit they have shifted the same to the appellant's unit. This has been apparent from the statement of Shri Vikram Jain who categorically stated that the goods had been transferred as there was lack of space in unit No. 1. If that may be true, then the inputs which were found short at unit No. 1 and found subsequently at some other place the confiscation of the same and the redemption fine should have been imposed on unit No. 1. The department did not choose to do so. A show cause notice was issued to unit No. 1 for the demand of the Modvat credit availed on the inputs found short was settled by the Unit No. 1 with the Settlement Commission? In view of this, the confiscation of the inputs found in the appellants premises is not correct as the Appellants had not purchased these

goods. Further the confiscation of the inputs would have arisen only if the credit has been availed and the inputs have not been duly accounted for. Since no Modvat was availed the confiscation of inputs at unit No. 2 is not correct and is set aside. As regards demand of duty in respect of alleged clearance of the goods by Surya Industrial Corpn. the appellant's contention, that this amount as liability was not fixed on the said company when the appellants purchased the said company, now it cannot be fastened upon them is to succeed. Section 11A talks about the liability, to be first confirmed and then the recovery has to come. The Appellants undoubtedly had purchased unit from Surya Industrial Corpn. along with assets and liabilities. Since this liability of the duty was not in existence when they purchased the unit from M/s. Surya Industrial Corpn. the same cannot be fastened upon the appellants. The Appellants also further produced a C.A. certificate wherein it was noticed the difference between recorded RG-1 sales and the balance sheet sale figure of Surya Industrial Corpn. is due to the reason of trading of the items by the said company. This plea was taken by appellant unit No. 1 before the Settlement Commission and they have also accepted this and has dropped the demand to this extent. The appeal of the appellants on this ground is allowed. Since the appellants are not contesting the demand of duty on the scrap as the amount involved is very small, I reject the appeal to that extent. In the circumstances, the appeals are allowed partially and penalties imposed upon the appellant is set aside.

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