Avishkar Processing Pvt. Ltd. and Vs. Commissioner of Central Excise

Avishkar Processing Pvt. Ltd. and Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/40688

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-31-2005

Judge : S T S.S.

Appellant : Avishkar Processing Pvt. Ltd. and

Respondent : Commissioner of Central Excise

Judgement :
1. The appellants are processors of MMF and they do job work for other traders. On 17/10/96 the officers visited the premises of the assessee and found that the sta(sic)tory records could not be correlated with the quantity of goods received and manufactured. Based on the enquiries made a Show Cause Notice was issued. The it. Commissioner confirmed the proceedings so initiated a duty amount and imposed a penalty of Rs. 65,000/- under Rule 173Q and Section 11AC & penalty under Rule 209A was imposed on the Director. In appeal, the Commissioner (Appeals) confirmed the penalty of Rs. 65,000/- on the assessee and Rs. 20,00(V- on the Director denying the benefit of 25% of penalty amount under Section 11AC. Even though the duty was paid prior to the issue of show cause notice and within a month of duty being determined. Hence these appeals.

2 After hearing both sides and considering the issue involved it is found and held. a) Penalty under Rule 209A cannot be upheld, as imposed on the Director, since no liability to confiscation of any goods has been alleged or and arrived at by the lower authority. Penalty under Rule 209A could be imposed only when there is a finding that the person concerned has knowingly handled goods liable to

confiscation. In the facts of this case, the penalty therefore cannot be upheld. b) From the records of this case it is found that there is no evidence which can lead to a conclusion of unaccounted receipt and thereafter production and clearance of goods. Nothing has been brought on record to indicate and confirm the clandestine removal as alleged. The nine job cards recovered are not conclusive or sustainable evidence to be related to the assessee herein as there is no material to indicate that these job cards arc in the handwriting or have been prepared by any person in employee or management of (he assessee. The confessional statement of Shri Kaluram, Managing Director of the assessee, relied upon by the lower authorities cannot be relied upon to confirm the charges as arrived in absence of corroborative evidence of the cards being admitted to be in the handwriting of persons connected with the assessee c) I find that (he duty demands have been paid in that view of (he matter (here was no reason even otherwise to call for and impose (he penalty under Rule 173Q (1) read with Section 11AC in (he facts of this case Agent imposition of penalty under Rule 173Q read with Section 11AC has not met the approval of this Tribunal in a catena of decisions.

3. When the duty demands and penalties are not being upheld the imposition of personal penalties on the Director also cannot be sustained on this ground. In view of the findings the order is set aside and appeals allowed.