Artee Graphite P. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-2005

Judge : S Kang, Vice

Appellant : Artee Graphite P. Ltd.

Respondent : Cce

Judgement :

1. The appellant filed this appeal against the order-in-appeal passed by the Commissioner (Appeals). The brief facts of the case are that on 2.12.98 a truck carrying the insecticides were found at about 3.00 P.M.near the factory of the appellant. The driver and representative of transporter who was also with the truck produced the invoice No. 234 dated 30.11.98 and GR No. 125 dated 30.11.98. Both the persons gave a statement to the Excise officers that the goods were loaded at 2.30 P.M on 2.12.98 from the premises of the appellant. The goods were seized on the ground that the pre-dated invoice under which the earlier goods were cleared were again used for clearing the excisable goods.

2. The adjudicating authority confiscated the goods and allowed the same on redemption fine of Rs. 60,000/- and imposed a penalty of Rs. 40,000/-, The contention of the appellant is that the goods were insecticides and the goods were manufactured on behalf of M/s Excel India Ltd. with their brand name. The goods cannot be sold in the market without licence under the Insecticides Act. The appellant also produced the GR showing that this consignment was cleared on 30,11.98 from their factory. The contention is that it is on the transporter to explain

the delay in carrying the goods. The contention is also that on verification no discrepancy in respect of stock of inputs as well as final product was found, therefore, the case of the Revenue is that the goods were cleared twice under the same invoice has no basis and the confiscation is not sustainable. The appellants also produced the original Gate Register.

3. The contention of the Revenue is that the goods were intercepted on 2.12.98 and both the driver and the representative of the transporter in their statements which were never retracted, stated that the goods were loaded from the factory of the appellant on 2,12.98 around 2.30 P.M. The contention is also that if the goods were cleared on 2.12.98 and the invoice and GR both should be of the same date when as the invoice and GR is of dated 30.11.98, therefore, the impugned order is rightly passed. 4. In this case the goods were intercepted on 2.12.98, the case of appellant is that the goods covered under invoice and GR both dated 30.11.98 in support of their claim. The appellant also produced the original gate register as per this register the seized goods were cleared on 30.11.98 which is evident from the entries made in the register. Therefore, in view of the statement of the driver and the representative of the transporter to the effect that the goods under confiscation were loaded from the factory of the appellant on 2.12.98 and at around 2.30 P.M, I find no merit in the appeal, the same is dismissed.