Stanley Indus. (India) Ltd. and Vs. C.C.

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SooperKanoon Citation : sooperkanoon.com/40906

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-2005

Reported in : (2006)(105)ECC369

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Stanley Indus. (India) Ltd. and

Respondent : C.C.

Judgement :

2. Appellants filed these appeals against the common adjudicating order passed by the Commissioner of Customs (Appeals). The brief facts of the case are that appellants filed 10 Shipping Bills regarding export of the goods declaring the same as goods of Indian origin not used after manufacturing under Duty Entitlement Pass Book (DEPB) Scheme. The goods related to 8 Shipping Bills were re-examined. On re-examined it was found that the consignment is of old and used machinery parts and it was also found that the higher value of the goods were declared to get higher amount within DEPB Scheme. After issuance of show cause notice the adjudicating authority confiscated the goods and also disallowed the DEPB credit in respect of all the consignments on the ground that these consignments were of old and used machinery parts and there was misdeclaration in respect of value also. Adjudicating authority also imposed personal penalty of Rs. 6,28,000/- on M/s. Stanley Industries Ltd. and penalty of Rs. 6,00,000/- on Shri Santosh Kumar Bagla.

3. The learned Counsel appearing on behalf of the appellant argued at length in respect of 8 Shipping Bills on the ground that the goods were assessed finally and goods were cleared and Revenue Officers had no power to re-open the assessment. The appellants also filed the copies of Shipping Bills in support of their arguments. The learned SDR appearing on behalf of the Revenue filed the copies of Shipping Bills to say that all the assessments were provisional. When the learned Counsel was confronted this situation, he fairly concedes that assessments were not provisional. We also find that in show cause notice, it was specifically mentioned that the assessment was provisional. In these circumstances, we find no merit in the contention of the appellant that the assessments were final and Revenue has no power to re-open the assessments. As the assessments were provisional therefore, the contention of the appellants on this aspect is liable to be rejected. Further, we find that copies of Shipping Bills filed by the appellants were not authenticated by the appellant or by the Counsel as true copy. In our view this attempt is made to just mislead the Bench.

4. Further, we find that there is evidence on record to show that appellant had no arrangement to manufacture the goods in question. It is not the case of appellant that goods were got manufactured from some other manufacturer. There is evidence on record to show that during the period of dispute or prior to this, there was no electric connection in appellant's Unit. The only evidence on record is that appellants had one generator set and Revenue has brought on record that the generator set is only worked for 50 hours. During 50 hours, it is not possible to manufacture the quantity of goods under dispute. The appellants also contended that in the Balance Sheet, the appellants showing some balance of goods, which were previously manufactured but we find that there is no statutory record to show that appellants had manufactured such goods. Further, we find that the statements on record shows that appellant never manufactured, the goods in question rather the old and used parts of machinery were purchased and appellant tried to export these old and used parts as new parts. Shri Manoj Kumar Sharma, who is an Export officer, in his statement specifically stated the present consignment as well as previous consignments were containing only old machinery parts though in the commercial documents like invoice/packing list the description of the goods was shown as new goods. The similar statements were made by the production

Manager, Director and other employees of the appellants. There is also evidence on record regarding purchase of scrap of old and used parts even the investigation conducted from the transporters, shows that scrap was purchased by the appellants and was transported to the factory. In these circumstances, we find no infirmity in the impugned order. The appeals are dismissed.