Commissioner of Central Excise Vs. Prashant Electrode

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-2005

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Prashant Electrode

Judgement :
1. The issue involved in this case is regarding the question of demand of duly from the respondents after a considerable period of time of investigation. The Commissioner (Appeals) has held that the duty is totally time-barred. Against this order, the Revenue is in appeal.

2. The relevant facts for my consideration are that, the respondents' factory was visited by the officers on 28-1-2000 for the exercise of stock taking. When the exercise was being done, the Officers found that there are some shortages in the finished goods. The officers did not draw any Panchnama on that date and left the premises of the respondents. On 16-4-2002, a show cause notice was issued to the respondents for demand of the duty on the goods which were found short on 28-1-2000. The respondents took the plea of time-bar before the adjudicating authority, but he did not consider it and confirmed the demand and imposed penalty. The Commissioner (Appeals), on appeal, considered the said plea and came to the conclusion that the question of time-bar does arise in this case and hence the appeal has to be allowed and accordingly allowed the appeal of the respondents. Being aggrieved with the Order-in-Appeal, the Revenue is in appeal.

3. Considered the submissions made by the learned DR and perused the records.

4. I find that the Department had ascertained that there is a shortage of finished goods as well as inputs as on 28-1-2000. The statement of the Partner was recorded on the same day who admitted the facts of the shortages. This being the fact before the authorities, the authorities did not move in action till 16-4-2002 to issue a show cause notice to the respondents. In the absence of any continued investigation from 28-1-2000 to 16-4-2002, the plea of the Revenue is that, the investigation was in process, cannot be accepted. Further thereafter, the statement of the Partner admitting the shortages is itself an end of investigation inasmuch as there was no further requirement of any investigation. Since the Department has not considered to investigate any further in this case, I find that the decision of this Tribunal in the case of Gammon India Ltd. v. CCE, Goa , squarely applies to the present case. The Tribunal in the above-said decision has held that: Demand - Limitation - Delay in issue of show cause notice - Show cause notice issued after two years of completion of enquiry - Suppression of facts - Appellants' contention that the construction of bridge was before the eyes of the general public hence no suppression, accepted - Period of delay in issuing show cause notice being identical to the period of delay in J.S.I. Industries Ltd. v. CCE, Ahmedabad 1999 (109) E.L.T. 316 (T), demand being time-barred, not sustainable - Section 11A of Central Excises Act, 1944.

The abovesaid decision was affirmed by the Hon'ble Supreme Court on an appeal in 2002 (146) E.L.T. A313 (S.C.).

5. Since in this case the investigation was complete on 28-1-2000 itself and the issuance of the show cause notice on 16-2-2002, delay has not been properly explained by the Revenue, and more particularly, in the absence of any investigation being continued, the above settled law by the Hon'ble Supreme Court applies in this case. In view of this, the appeal filed by the Revenue is dismissed.

(Operative part of this order was pronounced in the open Court on 5-12-2005)