

Rathi Ispat Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-12-2005

Judge : M Ravindran

Appellant : Rathi Ispat Ltd.

Respondent : C.C.E.

Judgement :

1. This is an appeal against the order-in-Appeal dt. 12.12.03 wherein the confiscation of the goods was upheld and redemption fine imposed was also upheld. 2. The relevant facts for consideration are that the Preventive Officers visited the factory of the appellants. They compared the physical stock of raw-material and the finished goods with the books stock. They found discrepancy in the physical stock of the raw-material as well as the finished goods. In respect of finished goods, there was an excess stock of 131 MTs of S.S. Billets. On a reasonable apprehension that the said goods were seized. A show cause notice was issued to the appellants for confiscation of the above said goods and for imposition of penalty. On adjudication, the adjudicating authority confiscated the said goods imposed redemption fine, but did not impose any penalty on such confiscation. On an appeal by the appellants to the Commissioner(Appeals), redemption fine was maintained. Hence this appeal.

3. Ld. Advocate for the appellants submits that the show cause notice does not whisper about the intention of the removal of these goods by the appellants. He submits that the S.S. Billets which were found excess by the authorities, were in

fact never sold by them from their factory and are captively consumed for manufacturing of S.S. Flats. He further submits that the quantity of 131 MTs is almost a days production which might not have been accounted for by mistake.

4. Ld. DR on the other hand submits that the physical verification of the goods was done and it is found that 131 MTs in excess is not disputed. He submits that this non-accountal of the goods in R.G.I is a violation of the law by the appellants and the imposition of redemption fine is correct. On penalties, he submits that there was no appeal filed by the Department against the original.

5. Considered the submissions made by both the sides and perused the records. I find that the excess quantity of S.S. Billets which were confiscated by the adjudicating authority were a day's production from the fact that R.G.I records of the S.S. Billets for the last one year shows quantity manufactured for a day is in the range of 100 to 140 MTs. I also find that the said copies of the R.G.I register also show s that these S.S. Billets are captively consumed by the appellants and they are maintaining record of such captive consumption by entry in the daily stock account. I also find that the appellants have been filing returns regularly on the manufacturing of S.S. Billets and captive consumption thereof. The excess quantity of 131 MTs. which was found in the appellants' factory' on the day of visit could have been as error of not recording the same in the statutory records. Since it is only a day's production., no intention be attributed to the excess quantity found m the premises of the appellants. Further I also find that the SCN is not at all alleging that the said goods which were found in excess were intended to be removed clandestinely. In the absence of any such allegation in the SCN and from the records of the appellants submitted before me, I find that could be a clerical error.

6. In the case of Bhillai Conductors (p) Ltd. v. CCE Raipur reported in 2000(125)Elt.781 (Tri), this Tribunal held In the absence of mens rea on the part of the appellants neither confiscation of goods nor imposition of penalty on the appellants is sustainable under Central Excise Rules 173Q.7. As discussed above since there was no intention to remove the goods clandestinely, the order-in-appeal dt.12.12.03 in respect of upholding of confiscation of the goods deserves to

be set aside. The impugned order is set aside and appeal is allowed.

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