

Hans Metals Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-01-2006

Judge : M Ravindran

Appellant : Hans Metals Pvt. Ltd.

Respondent : Cce

Judgement :

1. This appeal is directed against the Order-in-Appeal dated 134.2.2004 wherein the findings in Order-in-Original were upheld. 2. The relevant facts that arise for consideration are that the authorities intercepted a truck loaded with M.S. Bars. The officers directed the driver to produce the duty paying documents, for which the driver could not do so, hence the officers seized the goods along with truck. On follow up action the factory of the appellant was visited and stock taking was done and the officers found shortage of the finished goods and raw materials, vis-a-vis recorded balance in RG1. A show cause notice was issued to the appellants for confiscation of the seized goods, and demand of duty on the shortage of the finished goods.

The appellant contested the show cause notice. The adjudicating authority, in his order in original confiscated the seized goods and imposed redemption fine, and confirmed the demand on the finished goods found short and also imposed penalty on the appellants. The appellant's appeal to the Commissioner (Appeals) was dismissed and the order-in-original was upheld with no relief to the appellants. Hence this appeal.

3. The learned Advocate appearing for the appellants submit that the seizure of the goods found in truck without duty paying documents is wrong as the duty paying documents were prepared but the driver did not collect the documents. He relies upon the documents i.e. invoice No.235 dated 23.5.96 for the same. It was argued that the duty of the invoice No. 235 dated 23.5.96 was debited RG23A Part II on the same date hence there was no clandestine removal of the goods. As regard shortage of the finished goods it was submitted that the stock was taken only on eye estimation and such eye estimation can go wrong considering the fact that the stock of finished goods in the factory was 770.70 M.T. As regards the raw materials shortage he submits that the raw materials was utilized for the manufacture of the finished goods which according to the authorities was found short. He prays for setting aside the impugned Order.

4. The learned D.R. on the other hand submits that the appellants representative were present during the process of the stock taking and they did not object to the same and now they cannot claim that the whole stock taking was not correct. It was contended that the appellant should have objected to the same at the time of stock taking itself. He submits that the invoice No. 235 dated 23.5.96, as sought by the appellants being prepared but was not collected by the driver, must have been prepared later on in order to cover up the clandestine removal.

5. Considered the submissions made by both sides and perused the records.

5.1 As regards the goods seized I find that the appellant's contention that the invoice No. 235 dated 23.5.96 was prepared but the driver of the vehicle had forgotten to collect the duty paying documents seems to correct due to the reason that on perusal of the invoice I find that the invoice was prepared on 23.5.96 at 14.05 Hrs., the vehicle Registration number mentioned is MKJ-8711, which is the same as of the vehicle intercepted and the duty paying documents has indicated the date and time of removal as 23.5.96 at 2000 Hrs. The duty paying document also bears the name and address of the consignee and above all, the debit particulars are also mentioned on the invoice which reads as "Debit entry in RG23A Part II No. 274 dated 23.5.96. I find that in RG23A Part II at folio No. 27 the debit of the duty against invoice No. 235 dated 23.5.96 is shown at Serial No.

274 dated 23.5.96 and balance of the credit available is also shown. Further I find that the said RG23A Part II folio No. 27 has subsequent debit entries after entry No. 274, debit against the duty liability of invoice No. 236 dated 23.5.96 and invoice No. 237 dated 24.5.96 and there is no over writing or corrections. From the perusal of the said RG23A Part II Folio No. 27 and invoice No. 235 dated 23.5.96 it can be concluded that the appellants had prepared the duty paying document and had debited the duty liability in RG23A Part II. The appellants contention also is fortified from the fact that the RG1 of the appellant was also up date with the clearance entries of 23.5.96. From the above facts and circumstances, it is very clear that the seized goods found in the truck were duty discharged goods and not liable for confiscation.

5.2 As regards the shortage of the finished goods found in the appellants factory it was argued by the appellants that the whole shortage is due to the wrong calculation of the stock by eye estimation. The report of stock verification conducted by the preventive officers at the factory of the appellants shows that the recorded balance of finished goods in RG1 (M.S. Bars and miss rolls) is 1042.715 M.T. and the physical stock is recorded as 1023.95 M.T. There is no remark on the stock verification report as to how the physical stock verification was conducted. Since there are no weighment records attached to the show cause notice or to the stock verification report, it is to be concluded that the physical stock verification has been done on eye estimation. The appellants have been from the adjudicating stage contesting that eye estimation of such a huge quantity of M.S.bars and miss rolls could lead to error and hence there is no shortage of finished goods. The lower authorities have brushed aside these protest on the ground that the appellants representatives have agreed to the correctness of the stock verification. To my mind, I find that the appellants contention that there can be error in eye estimation of the physical stock seems to be correct. I find that the authorities have calculated a shortage of 19.620 M.T. out of the recorded stock of 1042.715 M.T. against physical stock of 1023.093 M.T. The shortage in terms of percentage works out about 1.91% of the total stock. This may be also due to the fact that there was no physical weighment of the finished goods. Errors may creep in the eye estimation of huge quantity of the stocks. To come to conclusion that there was clandestine removal of goods due to shortage of finished goods, that also on

eye estimation, without any further corroborative evidence, would be wrong.

In this case the authorities have not produced any corroborative evidence as regards clandestine removal of finished goods. The authorities sought to tie up the seized goods in the truck as corroborative evidence, but since that allegation has failed, as held by me in earlier paragraph, it cannot be said that the appellant has clandestinely removed the finished goods found short.

6. In view of the above circumstances the impugned order in-appeal, to the extent it affects the current appellant, is set aside. Appeal allowed with consequential relief, if any to the appellants.

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