

Noida Packaging Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-2006

Judge : S Kang, Vice-, S T T.V.

Appellant : Noida Packaging Ltd.

Respondent : Commissioner of Central Excise

Judgement :

2. The appellants filed this appeal against the Orders-in-Appeal whereby the demand of Rs. 1,75,864/- was confirmed and penalty of Rs. 50,000/- was imposed on the appellants.

3. The appellants are engaged in the manufacture of flexible laminated sheets. On 6-8-1997, the factory premises was visited by the Excise Officers and during verification, it was found that the appellants were maintaining two sets of invoices having the same serial number showing the clearance of goods on payment of duty. However, the duty was debited in their statutory records only once. These invoices were duly authenticated by the authorized signatory of the unit. Show cause notice was issued for demanding duty and imposition of penalty on the ground that the appellants cleared goods twice on the same number or invoices without payment of duty and duty has been paid only once.

4. The contention of the appellants is that, due to some problem regarding payment of sales tax, they are preparing the second invoice.

The contention is that, invoice of the same serial number is to the same customer showing the same quantity of goods and in one invoice payment of sales tax is mentioned and whereas in the other invoice, no payment of sales tax is mentioned. As the payments are exempted from payment of sales tax, therefore, such first invoice was prepared showing the payment of sales tax, the second invoice was issued rectifying the mistake. It is also contended that during verification no shortage of raw material or extra or shortage of finished products was found. The appellant also relied upon the following decisions of the Tribunal: Commissioner of Central Excise, Meerut v. Moon Beverages Ltd. 1999 (33) RLT 153 (CESTAT); The contention of the appellants is that, in the absence of proof of manufacture of goods and clandestine removal, duty cannot be demanded on the basis of some documents found in the factory showing clearance of duty. The appellants submitted that in the above decisions, the Tribunal held that in the absence of independent corroborated evidence showing receipt of raw material and clearance of goods, duty cannot be demanded merely on the ground that two parallel sets of invoices are maintained by the manufacturer.

5. The contention of the Revenue is that, there are two sets of invoices; in one set the goods are shown to be cleared to the same customer showing the payment of duty and in another set of invoice the goods are being shown to be cleared under the same number of invoice to different customers. The Revenue is also relying upon the provisions of Section 173G of Central Excise Rules, which provide the procedure for cancellation of the invoices in case the goods were not cleared. The contention is that, as per the provisions of this Rule due intimation is to be given to the Revenue regarding cancellation of the invoice.

The contention is that, as the invoice was not cancelled, therefore, it shows that the appellants cleared the goods under the same serial number of invoice twice. The invoices were duly authenticated by their authorized signatory. Therefore, the duty was rightly confirmed.

6. We find that in the present case the appellants are not disputing that they were maintaining parallel set of invoices having the same serial number. The invoices

were prepared showing the clearance of the goods to the same customer in one set of invoice and clearance of the goods under the same serial number to other customers. The only explanation of the appellants is that, due to some confusion regarding payment of sales tax, two sets of invoices were prepared. The manufacturer as per the Central Excise Rules has no authority to maintain two sets of invoices having same serial number. If one invoice is to be cancelled, then Revenue authorities are to be informed and the second invoice is to be prepared, but the second invoice will not bear the same serial number. The invoices were issued showing the clearance of goods on payment of duty having the same serial number to different customers also. Regarding this, no explanation is coming forward from the appellants. The case law relied upon by the appellants is not applicable to the facts of the present case as in the present case statutory documents showing payment of duty were recovered from the premises of appellants and appellants are not denying the recovery of the same. The appellants particularly placed reliance to the Single Bench decision of this Tribunal in the case of the SKV Chemicals, supra, and we find that in this case the provisions of Rule 173G of Central Excise Rules were not taken into consideration while setting aside the demand. The provisions of Rules provide special procedure for cancellation of invoices, therefore, the ratio of the decision in the case of SKV Chemicals, supra, is not applicable on the facts of the present case.

7. In view of the above, we find no infirmity in the impugned order.

The appeal is dismissed.

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