

Translam Ltd. and Dinesh Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-27-2006

Judge : N T C.N.B.

Appellant : Translam Ltd. and Dinesh

Respondent : Cce

Judgement :

1. These two appeals are directed against the same order. They were heard together and are disposed of under this common order.
2. The appellant is a dealer registered with central excise for the purpose of issuing modvat invoices. The subject of this appeal is the confiscation of eight coils of copper rods weighing 18,466 kgs and valued at Rs. 23, 08,250/-. The same has been confiscated under Rule 173Q of the Central Excise Rules read with Rule 57G of the Central Excise Rules, 1944.
3. The contention of the learned Counsel is that the action is entirely unwarranted inasmuch as there was no violation of central excise rules.

It is being pointed out that the copper coils in question were purchased by the appellant dealer from M/s. Birla Copper and this position is confirmed by the statutory record maintained by the appellant. The learned Counsel submits that there is no dispute raised about the duty paid character of these copper coils. It is the appellant's contention that these copper coils had been sold by it to the second

appellant M/s. Dinesh Industries against a verbal order. The goods had also been despatched by two tempos and that the tempos were at gate of the M/s Dinesh Industries when they were intercepted by the central excise officers. Subsequent verification of record of the appellant and verification with the proprietor M/s. Dinesh Industries had also confirmed the sale of the copper coils to M/s. Dinesh Industries. The appellant had also issued 4 invoices for the goods, though those invoices were not despatched along with the consignments.

It is the contention of the learned Counsel that consignments sold by a dealer do not have to be accompanied by invoices issued under Rule 57GG. They are required only for the purpose of taking modvat credit on the goods. It is the submission of the learned Counsel that confiscation of the duty paid materials was entirely unjustified in the circumstances of the case.

4. The learned Counsel also submits that the authorities have not specified the Sub-rule of Rule 173Q of the Central Excise Rules for the purpose of confiscation of the goods. It is his submission that it is well settled that if specific provision of law is not involved, the order will not be sustainable. He has relied the decision of the Hon'ble Supreme Court in the case of *Amrit Foods v. CCE, U.P.* 2005 (190) ELT 433 in support of this contention. Reliance is on para 5 of the judgment which may be read: The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. The Tribunal has set aside the order of the Commissioner on the ground that neither the show cause notice nor the order of the Commissioner specified which particular clause of Rule 173Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173Q contains six clauses the contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the Rule 173Q. This not having been done the Tribunal's finding cannot be faulted. The appeal is, accordingly, dismissed with no order as to cost.

5. The DR would point out that the goods in question were to move alongwith the invoices of the dealer. In the absence of such invoice the goods were liable to

confiscation as the sale to M/s. Dinesh Industries is not supported by any evidence.

6. The entire evidence on record support the appellant's explanation regarding of duty paid goods to M/s. Dinesh Industries. The goods in question find entry in the statutory record of the appellant and were received from the manufacturer, namely, Birla Copper. Evidence of proprietor of M/s. Dinesh Industries as well as the invoices in the appellant's record confirmed the same. There was dearly no duty evasion in the present case. Further, credit is required to be taken by Dinesh industries only in terms of invoices and Dinesh Industries had not taken any credit. The proceedings are initiated the without (Sic) sub-rule under which action is being taken.

7. In the result, confiscation of the copper coils and imposition of penalty are set aside with consequential relief, if any, to the appellant.

1. This appeal is directed against confiscation of 3 coils found in the appellant's factory and imposition of penalty.

2. Action has been taken pursuant to verification of stock in the appellant's factory. The finding was that there was unaccounted stock in the appellant's factory. In the reply to the show cause notice, the appellant has explained that the goods in stock are under different categories and according to the explanation, the difference is only 20 kgs. Clearly, there is no allegation of any evasion of duty. A minor variation in the stock is natural in commodities, which are accounted by way of weight. There is no offence as such in the present case.

Therefore, confiscation and penalty were not justified. The penalty under Section 11A of the Central Excise Act can arise only upon evasion of duty.

3. The impugned order is set aside and the appeal is allowed with consequential relief, if any, to the appellant.

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