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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-31-2006

Reported in : (2006)(109)ECC477

Judge : M Ravindran

Appellant : Luminous Electronics Ltd., Sar

Respondent : Cce

Judgement :

1. All these three appeals are directed against the order in appeal dated 29.12.2003 wherein it was upheld that the appellants have violated the provisions of the Central Excise Rules. Since all the appeals arise out of common order in appeal, all the three appeals are disposed off by a common order.

2. The relevant facts that arise for my consideration are appellant No.1 i.e. Luminous Electronics Pvt. Ltd. is a manufacturer of Inverters and UPS and appellant No. 2 i.e. SAR Silicon Pvt. Ltd., is a dealer of the goods manufactured by appellant No. 1, while appellant No. 3 i.e.

Shri M.L. Malhotra is a Director of appellant No. 2. The allegations against appellant No. 1 are that during the visit of their premises the officers found excess finished goods and excess raw materials as against the recorded balances in the statutory records. Allegations against appellant No. 2 is that he had procured dutiable excise goods without the proper duty paying document and has indulged

in the activity of clandestine removal. A show cause notice was issued for the confiscation of the seized goods from both the appellants and penalty was also proposed to be imposed on them and also on the appellant No.3. The adjudicating authority confiscated the seized goods and imposed penalty on all three appellants. On an appeal the appellate authority has also upheld the order in original. Hence this appeal.

3. Considered the submissions made at length by both sides and perused the records. The issue against the appellant No. 1 is that they have not accounted for the finished goods and have also not accounted the raw materials found in excess. I find that the appellate authority has rejected the contentions of the appellant No. 1 as below : "At the time of conducting physical stock taking, some of the raw material was also found short which proves that they were indulging in manufacturing and clandestine removal of goods a fact which was proved by recovering goods at the place of their dealer having been cleared without any invoice and payment of duty.... The plea of the party that they had purchased raw materials found in excess in their premises from un-registered suppliers, also does not hold water as neither they took this adjudication or during investigations. All these pleas they are taking at the time of appeal stage and without the support of legal document. Non-accountal of finished goods and raw material has been established by the Revenue on the basis of statements of the appellants, their records and recovery of same goods at the place of dealer having been cleared clandestinely.

Consequently confiscation of finished goods and raw material and consequential imposition of penalties and redemption fine on the noticees is sustainable under the central excise law. Purpose for keeping finished goods unaccounted and excess raw material is proved by recovering the clandestine removed goods outside the place of manufacture and in the premises of their dealer. So it is not mere a case of non-accountal of goods as intention of the appellants was to remove the goods without payment of duty keeping in view their past clearances made to their dealers and established by the Revenue by recovering such goods.

4. The findings of the appellate authority are not in consonance with the settled law. If the appellant has procured raw materials from a unregistered dealer and has not availed any modvat credit than he is not required to record the same in the statutory records. The recording in the statutory records arises only when any credit of duty paid on inputs is involved. If the appellant takes this plea lower authorities should consider the same. To my mind, just because the appellant has not recorded the raw material in the books, in itself cannot be considered as to their involvement in clandestine removal of goods.

Further, in respect of the excess finished goods found in the factory of appellant, the explanation given by the appellant that they record the goods manufactured in their RG1 register when the manufacturing is complete has to be considered in a overall perspective of the goods manufactured. I find that in this case the appellant has explained that the non accountal of the finished goods is due to the fact that there was a holiday in between the day of manufacture and visit of the officer and it was also brought to the notice of the officer that the goods were lying in stores. It is seen that the lower authorities have not brought on record any corroborative evidence as regards the consumption of the raw materials etc to drive home the point that the appellants was indeed involved in clandestine removal of finished goods. In the absence of any contrary evidence, mere assertion that the excess goods were earmarked for clandestine removal and confiscating them is against the settled law as decided in the (sic) Bhilai conductors case 2000 (125) ELT 781 (Tri.). As regards the confiscation of the raw materials it is a settled law that such confiscation is not valid as they are not manufactured by the appellant. In view of this the confiscation of the goods of appellant No. 1 are unsustainable and hence set aside. Since the confiscation is set aside the penalty imposed on the appellant No. 1 is also liable to be set aside.

5. As regards the appellant No. 2 & 3 I find that the appellate authority has not come to any findings in the order in appeal. The appellants produce before me the duty paying documents in respect of the goods found in the premises of appellant No. 2. The perusal of documents show that the duty liability has been discharged on these goods. Since the lower authority has not given any findings on these documents, even there is no mention of the same in the order in appeal, it would

be improper to consider the same at the second appeal stage.

In order to appreciate the correct position and facts, to my mind the appeal of appellant No. 2 & 3 is to be remanded to the appellate authority to consider the issue afresh after granting the appellants a opportunity of personal hearing. The appeal of appellant No. 2 & 3 are allowed by way of remand to the appellate authority.

6. In view of the facts and circumstances as mentioned above the appeal of appellant No. 1 is allowed and the appeals of appellant No. 2 & 3 are allowed by way of remand to the appellate authority.

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