Commissioner of C. Ex. Vs. Rakesh Singhal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-19-2006

Reported in : (2006)(110)ECC568

Judge : S Kang, Vice-

Appellant : Commissioner of C. Ex.

Respondent : Rakesh Singhal

Judgement :

1. Heard both sides. Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby penalty on the present respondent was set aside.

2. The respondent is the Director of M/s. P.J. Steels (P) Ltd. The premises of M/s. P.J. Steels was visited by the revenue officer and it was found that there was certain shortage in their final product. Duty was demand from M/s. P.J. Steels (P) Ltd. and penalty of the equal amount was imposed on the firm and penalty of one lakh was imposed on the present respondent by the adjudicating authority on the ground that everything was in the knowledge of the present respondent, therefore, liable for penal action.

3. The Commissioner (Appeals) set aside the penalty on the ground that there is nothing on record to prove that present respondent physically dealt with the goods found short. There is also no finding in the adjudication order that present

respondent had dealt with excisable goods in any manner specifically contemplated under Rule 26 of the Central Excise Rules.

4. The contention of the revenue is that the appellant is the Director of the Company and cannot absolve himself of an offence of clandestine removal of the goods as he was looking after all the works relating to the unit.

5. Ld. Counsel appearing on behalf of the respondent submitted that there is no finding by the adjudicating authority regarding his specific role which needs to evasion of Central Excise Duty. The contention is that immediately after visiting the Central Excise Officer, the respondent wrote a letter objecting to the method adopted by the revenue regarding weighment of the goods on the ground that weighment was done on average basis, therefore, it cannot be said that there was any shortage.

6. In this case the revenue is asking for penalty on the present respondent who was the Director of the firm where the goods were found short. The adjudicating authority held that the present respondent was aware of every activity of the firm and everything was in his knowledge. There is no finding nor any allegation in the SCN regarding particular commission on the part of the respondent which show that there was intention to evade payment of duty. Rule 26 provides where any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any manner deals with any excisable goods which he knows or has reason to believe are liable for confiscation is liable to penalty. The Tribunal in the case of Mitra & Co. Ltd. v. CCE, New Delhi set aside the penalty on the Director which was imposed on the ground that the Director being overall incharge of the firm is liable for penalty. The Tribunal held that in absence of any evidence on record to show that the Director did anything with mens rea against the revenue or he had personal entertained belief that the goods were liable for confiscation under Central Excise Law, therefore, penalty on Director is not sustainable.

In the present case also there is no such evidence. In these circumstances, I find no infirmity in the impugned order, the appeal is dismissed.