R.K. Steels Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-2006

Judge : M Ravindran

Appellant : R.K. Steels

Respondent : Cce

Judgement :

1. This appeal is directed against Order-in-Appeal dated 30.9.2004 which upheld the Order-in-Original imposing penalty under Rule 26 of the appellant.

2. The relevant facts that arise for consideration are that the appellant in this case is brand owner of the brand 'R.K.' He supplied empty cartons to different manufacturers of iron wooden screw. These manufacturers after manufacturing iron wooden screw pack them in these boxes and sell to the appellant claiming exemption of duty as a small scale industry. Investigation carried out by the authorities concluded that the manufacturers who avail the benefit of SSI exemption were not eligible to avail the same on the ground that they are manufacturers of branded goods. Show cause notices were issued to all the three manufacturers and the current appellant was made one of the noticee in all the 3 show cause notices. The adjudicating authority confirmed the demand against all the 3 manufacturers for wrong utilization of SSI benefit and imposed penalty on the current appellant under Rule 26 of the Central Excise Rules, 2002. On an appeal the Commissioner (Appeals) also concurred with the views of the adjudicating authority and upheld the penalty imposed on the appellant. Hence,

this appeal.

3. Learned Advocate for the appellant submits that the imposition of penalty under Rule 26 is not warranted in this case inasmuch that there is nothing on record to show that the appellant had fulfilled the conditions laid down under Rule 26 for imposition of penalty on him. It is his submission that the appellant had, in fact, ordered for iron wooden screws from 3 manufacturers and asked them to pack in his containers and sell to him.

4. Learned D.R., on the other hand, submits that the evidences like supply of packing material with brand 'R.K.' is itself enough evidence to indicate that the appellant wanted to avail the benefit of SSI exemption notification from the three units. The appellant had intention to evade payment of duty by colluding with three manufacturers.

5. Considered the submissions made by both sides and perused the record. It is not in dispute that the appellant was owner of the brand 'R.K.'. It is also not in dispute that the appellant had supplied empty boxes with his brand name to the 3 manufacturers. All the 3 manufacturers manufacture iron wooden screw, pack and supply to the appellant claiming benefit of SSI exemption notification. I find from the record that nowhere in the statement of the manufacturers or the appellant it has been brought out that the appellant instigated the manufacturer to avail the benefit of SSI exemption. The appellant's case is very clear that he had first placed the order for iron wooden screw and supplied his packing material for packing the same. I find considerable force in the arguments of the appellant. In order to visit the appellant with the penalty, under Rule 209A of the Central Excise Rules, 1944, now Rule 26 of the Central Excise Rules, 2002 the department has to prove a constructive role played by the appellant in evasion of duty. The said Rule 26 reads as under: Rule 26. Penalty for certain offences. - Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater.

From the plain reading of the above said Rule it can be seen that in order to impose the penalty it has to be prove that the appellant had reason to believe that the goods are liable for confiscation. In this case I find that none of the statements recorded by the authorities indicate to the fact that the current appellant was aware that the goods are not eligible for exemption notification as claimed by 3 manufacturers. In the absence of any contrary evidence that the appellant was aware that these goods are liable for confiscation, I do not find any reason that the appellant should be penalized under Rule 209A of the Central Excise Rules, 1944 or under Rule 26 of the Central Excise Rules, 2002.

6. Accordingly, in view of the facts and circumstances as mentioned above, the impugned order is liable to be set aside and I do so. Appeal allowed.