Shrikant Processors (P) Ltd. and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-2006

Reported in : (2006)(111)ECC528

Judge : M Ravindran

Appellant : Shrikant Processors (P) Ltd. and

Respondent : C.C.E.

Judgement :

1. This appeal is directed against Order-in-Appeal dated 30.4.2004 which upheld the order-in-original confirming the demand of duty and imposing penalties on the company as well as its Director.

2. The relevant facts that arise for consideration are that the officers and Preventive staff of the Central Excise, Pali visited the factory of the appellant. During stock verification the officers found shortage of 36,949 Mtrs. of man-made fabrics than the recorded in RG-1.

Show cause notice was issued demanding the duty on short found goods on an allegation that these were removed clandestinely, and also seeking to impose penalty on the company as well as on its Director. The adjudicating authority confirmed the demand of duty on the quantity found short in the appellant's factory, imposed equivalent penalty on the company and also imposed personal penalty on the Director. On an appeal, Commissioner (Appeals) also concurred with the view of the adjudicating authority. Hence, this appeal.

3. Learned Advocate appearing for the appellant submitted that the entire stock taking of the goods which was done on 29.12.2001 in the factory had not considered the stock which were found excess on 21.6.2001 in the appellant's sister concern. It was also submitted that the lower authorities have not brought on record any specific evidence regarding clandestine removal of the short found goods. As regards penalty on the Director it is his submission that the penalty imposed on the Director in this case is not warranted in as much that during the relevant period the Director was absent from the factory.

4. Learned D.R. on the other hand submits that in this case on the date of physical verification i.e. on 29.12.2001 it is an admitted fact that there was a shortage of finished goods and there is clandestine removal of the goods which has been correctly recorded in the statement given by the Director.

5. Considered the submissions made at length by both sides and perused the record. I find that in this case shortage of goods found by the authorities on physical stock verification is not explained by the appellant satisfactorily. The appellant could not produce any documentary evidence to show the clearance of goods on payment of duty.

The statement of the Director recorded on 29.12.2001 in itself indicates that there could be chances of clandestine removal though attributable to the clerical staff having been involved in this case.

It is the appellant's defence that the excess of 55000 Mtrs. of M.M.fabric which was recorded on earlier stock verification, if considered would not have resulted in shortage of 36949 Mtrs. of cloth is without any substance in as much that in respect of that quantity i.e. 55000 Mtrs., I find from the RG-1 register that this quantity was reduced and balance was struck on 23.6.2001, which was carried forward as opening balance in RG1 records. It was also contended that no action has been taken as regards that quantity, hence, the same should be considered as stocks of appellant is also without any justification, as the revenue has recorded correct opening balance of physical stock as on 23.6.2001 and it was for the appellant to correctly record the manufacturing and clearances of finished goods. The physical verification having shown a shortage of finished goods which had not been explained satisfactorily, hence, the impugned order upholding the confirmation of demand, penalty and interest on the appellant company is liable to be upheld and I do so. Since the appellant had already deposited the entire amount of duty, interest payable and 25% of the penalty imposed within 30 days of receipt of this order the provisions of Section 11AC in this case are applicable.

6. As regards personal penalty imposed on the Director of the company, I find that he had, in his statement dated 29.12.2001 clearly mentioned that the clerical staff had cleared the goods without issuing invoices.

The Revenue had not brought on record any statement of the clerical staff contrary to the statement of the Director. In the absence of any direct evidence which could implicate the Director having a role in clandestine removal, personal penalty cannot be imposed on him. In view of this personal penalty imposed on the Director is liable to be set aside and I do so.