Commissioner of C. Ex. Vs. Dhanlaxmi Re-rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-18-2006

Judge : T Anjaneyulu

Appellant : Commissioner of C. Ex.

Respondent : Dhanlaxmi Re-rolling Mills

Judgement :

1. Heard the learned JDR. The respondents are called absent. The Revenue is in appeal aggrieved by the impugned order passed by the Commissioner (Appeals), Central Excise & Customs, Aurangabad where in he has set aside the penalty of Rs. 1,000/- (one thousand) imposed under Section 11AC since the duty has been paid in full much in advance before issuance of show cause notice. The Commissioner (Appeals) while relying upon the various decisions including CCE, Delhi-III, Gurgaon v.Machino Montell (I) Ltd. as set out in para 6 of the impugned order rejected the appeal filed by the Revenue since he has found no substance in it. Still aggrieved by the same, the Revenue is in appeal.

2. I have gone through the impugned order. The respondents herein are manufacturers of CTD bars. On the basis of the intelligence received that the assessee was evading central excise duty by way of clandestine clearances, the Central Excise Officers visited the factory on 17-4-2002. The search of the Mill was conducted in the presence of proprietor of the mill and the panchnama was drawn showing the difference in the stock of finished goods and raw materials. It appears that the assessee had accepted the difference in the stock position of the

CTD bars and melting scrap and paid the duty. The contention of the assessee is that the shortage in CTD bars was due to accumulated weight difference over a period of time. The adjudicating authority found fault on this aspect and treated this/suppression of fact hence imposed penalty of Rs. 1,000/-. The learned JDR submits that in view of the latest decision of Punjab and Haryana High Court wherein the guidelines have been set out about imposition of penalty in the nature of clandestine removal of goods, shortage, etc. there appears nothing of that sort in the present appeal. There was only weight difference over a period of time in respect of CTD bars. Therefore, the matter does not come within the purview of clandestine removal. The impugned order passed by the Commissioner (A) is to be upheld. Hence, the Revenue appeal is dismissed. The cross objection is also disposed of.