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Cce Vs. Sadashiv Structurals Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-26-2006

Reported in : (2007)(115)ECC121

Judge : M Ravindran

Appellant : Cce

Respondent : Sadashiv Structurals Pvt. Ltd.

Judgement :

1. This appeal is filed against the order in appeal dated 14.9.2004 that set aside the order in original vide which confiscation of the goods was ordered, with an option to redeem the same on payment of redemption fine and penalty was also imposed.

2. The relevant facts that arise for consideration are that the Preventive officers of Central Excise Commissionernate visited the factory of the respondent on 17/18.11.2003. During the physical verification of the finished goods and inputs, which was conducted in the factory premises, the officers noticed a discrepancy of non-accountal of finished goods of 20.500 MTs of Galvanized steel pipes. On a reasonable belief that this quantity was kept with intention to clear clandestinely, they were seized. Show cause notice was issued to the respondent proposing confiscation of the goods and imposition of penalty. The adjudicating authority confiscated the goods with an option to redeem the same on payment of redemption fine and also imposed penalty. On an appeal, the commissioner

(Appeals) set aside the order in toto. Hence this appeal.

3. The learned DR submits that the issue involved in this case is regarding the excess quantity found in the factory premises of the respondent. It is his submission that the physical stock verification had revealed that there was excess stock on the date of physical verification which could be presumed for clandestine removal. It is his submission that the commissioner (Appeals) has set aside the order in original without considering the issue. Once the stocks are not accounted for by the respondent then the said stocks are liable for confiscation and penalty is also liable to be imposed.

4. The learned Advocate appearing on behalf of the respondents submits that the issue is squarely covered by the decisions of the Tribunal in the case of Bhilai Conductors v. Commissioner reported in 2000 (125) ELT 781 and also by the decision in the case of CCE, Meerut v. Bajaj Carpets 2006 (199) ELT 117 with the proposition that even if the goods are found in excess in the factory premises, confiscation is not unwarranted, as there is no allegation of removal of non-accountal goods without payment of duty. It is also his submission that the excess quantity of goods was the day's production.

5. The learned DR submits that the respondent did not take up this issue of day's production before the lower authorities i.e. the adjudicating authority but had taken up the issue before the Commissioner (Appeals) and he has not given any finding on this point.

6. Considered the submissions made by both the sides and perused the record. It is not disputed that there was an excess quantity of galvanized steel pipes. The learned Commissioner (Appeals) in his order in appeal has set aside the order in original on the following findings: I have carefully examined the case records including the appellants submissions made in writing and at the time of personal hearing and observe that the department has made the case without establishing even a single instance of clandestine removal of the goods by the appellant or without producing any evidence of the intention to evade duty by clandestine removal of the goods. The Hon'ble Andhra Pradesh High Court in the case of Southern Steel Lt. v. EOU has held in unequivocal terms that seizure and

confiscation under Rule 173-Q (Now Rule 25) cannot be done prior to the removal of goods from the factory as liability discharge duty liability arises at the time of removal of goods from the factory.

In the case of Anil Sunil Trade & Investment Pvt. Ltd. v. CCE Bangalore , it was held by the Hon'ble Tribunal that when no evidence brought on records to show attempt was made to clear the goods without payment of duty goods not liable for confiscation and redemption fine is not imposable. The same view has been taken by the larger Bench of the CEGAT in the case of Bhillai Conductors Pvt. Ltd. v. CCE Raipur reported as 2000 (125) ELT781 (Tribunal) which has further been followed by the CEGAT in the case of CCE Chandigarh v. Parabolic Drugs Ltd. vide Final order No A/753/04-NB(SM) dated 12.4.04. Following the ratio of the judgments, I set aside the order in original.

7. It is seen from the above reproduced finding that the Commissioner (Appeals) has correctly followed the settled position of law in various judgments. Further in this case before me, the question is that if the production is of day's production, then the error of not recording the same on the day is covered by the judgment of the Tribunal in the case of Garg Polypack (P) Ltd. v. CCE Kanpur 8. I find that the Tribunal in the case of Bajaj Carpets (supra) has come to the following conclusion: The present appeal contends that entry of daily production in RG.I is a statutory requirement and the Commissioner is in error in not confiscating the goods and imposing penalty. During the hearing of the case, learned JDR has brought to our notice the following decisions on the subject:Media Video Ltd. v. Commissioner of Central ExciseBlue Blends India Ltd. v. Commissioner of Central ExciseNizam Sugar Factory Ltd. v. CCE and Ors.

4) Kirloskar Brothers Ltd. v. Union of India and Ors.

We find that the larger Bench of the Tribunal has held in the case of Bhillai Conductors Ltd. v. Commissioner 2000 (125) ELT 781 that confiscation of manufactured goods found in the factory of production is not attracted. In the present case, there is not even an allegation of removal of non-accounted goods or effort to remove un-accounted goods without payment of duty. In such a factual situation, the Commissioner's order cannot be faulted.

9. Accordingly, I find that the issue involved in this case is squarely covered by the decision of the Tribunal as indicted in the above paragraphs. In view of the facts and circumstances of the case, the appeal filed by the Revenue is dismissed.

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