Nachiketa Papers Ltd. Vs. Cce

Nachiketa Papers Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/44739

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-2007

Reported in : (2007)(117)ECC291

Judge : P Das

Appellant : Nachiketa Papers Ltd.

Respondent : Cce

Judgement :

1. In this case, by Final Order No. A/328-329/05-NB(S) dated 2.3.2005 and Misc. Order No. 34/06-SM(BR) dated 9.12.2005, the Tribunal set aside the penalty imposed under Section 11AC of Central Excise Act, 1944 and allowed the appeals filed by the appellants. Revenue filed appeal before the Hon'ble High Court of Punjab & Haryana against the said order of the Tribunal. By Judgment and Order dated 25.9.2006, the Hon'ble Punjab and Haryana High Court set aside the order of the Tribunal and remanded the matter to the Tribunal for a fresh decision in accordance with law. The relevant portion of the order of the Hon'ble High Court is reproduced below: We have already gone into the matter in our order dated 25.7.2006 in CEA No. 13 of 2005 (Commissioner of Central Excise Delhi-III v. Machino Montell (I) Limited and Anr.) and held that mere deposit before issuance of show cause notice was not; conclusive for not imposing penalty and the matter had to be gone into on merits.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of writing and printing papers and newsprint paper falling under Chapter 48 of the Central Excise Tariff Act, 1985. They were using the waste paper as their main raw material for the manufacture of their final products. On 18.2.2003, the central excise officers visited their factory and verified the stock of raw material and finished goods. During stock verification, the said officers detected shortage of raw material and finished goods. Shri Ajay Goel Director of the appellant company, in his statement dated 18.2.2003, stated that he was not attending the factory regularly due to illness. So, he is not in a position to explain the above shortage.

However, he stated that keeping in view the shortage detected by the said officers of the raw material, it might be that some of his employees involved in removing of said goods without payment of duty.

He also undertook in his statement to deposit the duty in respect of the shortage of goods. The department quantified the demand of duty on the shortage of raw material on the basis of inputs and output ratio on finished goods. The appellants deposited the entire amount of; duty on 27.2.2003 as quantified by the department. A show cause notice dated 5.11.2003 was. issued proposing to demand of duty and to appropriate the same amount as deposited by the appellants and to impose penalty under Section 11AC of the Central Excise Act. The Adjudicating authority confirmed the demand of duty and adjusted the same against deposit and also imposed penalty of equal amount under Section 11AC of the Act, 1944, which was upheld by the Commissioner (Appeals).

3. The learned advocate submits that there is no evidence of clandestine removal of the goods. He further submits that the Director of the appellant company in his statement categorically stated that he was not attending the factory due to illness and, therefore, the alleged irregularity was done by his employees. He also submits that the appellant deposited the duty before issuance of the show cause notice in order to avoid further litigation which indicates their bona fide.

4. The learned D.R. on behalf of the respondent submits that in this case, the appellants did not deposit the duty voluntarily. In fact, the department detected the

shortage during stock verification and thereafter the appellants deposited the duty. He submits that the goods were cleared without payment of duty in a clandestine manner and, therefore, it is a fit case to invoke Section 11AC of the Central Excise Act, 1944.

5. After hearing both sides and on perusal of the record, it appears from the impugned orders that the demand of duty on raw material found short is based on the presumption that the said raw material must have been used in the manufacture of the final products which were ultimately cleared without payment of duty. It is undisputed fact that the demand of duty on raw material is also based on the quantification of the production on the basis of the input and output ratio. So, the department failed to produce any evidence of clandestine removal and sale of the goods. Be that it as it may, there was a shortage of raw material and finished goods and the appellants paid duty on the said shortage immediately after the ascertainment of the shortage, as such, it cannot be a case where duty of excise has not been paid by reason of fraud, collusion or any willful mis-statement or suppression of fact or contravention of any provision of the Central Excise Act or Rules made thereunder with intent to evade payment of duty and, therefore, Section 11AC of the Central Excise Act, 1944 cannot be invoked. Accordingly, the impugned orders in so far as the imposition of penalty, under Section 11AC of Central Excise Act, 1944 are set aside, and appeals are allowed with consequential relief, if any.