Cce Vs. Him Techno Forge Ltd.

Cce Vs. Him Techno Forge Ltd.

SooperKanoon Citation : sooperkanoon.com/44754

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-2007

Reported in : (2007)(118)ECC76

Judge : P Das

Appellant : Cce

Respondent : Him Techno Forge Ltd.

Judgement :

1. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of forgings of iron and steel products classifiable under Chapter 72 of the Central Excise Tariff Act, 1985.

On 26.12.1997, the central excise officers visited the factory of the appellants. They verified the stock of raw material and finished goods.

The stock of finished goods were found tallied with R.G.1 stock ascertained by the officers on physical verification. But, there was shortage of raw material of Alloy Steel to the quantity of 21.692 MT wherein central excise duty involved Rs. 18,091 /-. The statement of the Director of the appellant company Shri N.K. Dalal was recorded who admitted the shortage and debited the duty in their RG-23A Part-II/PLA account on 26.12.1997. On scrutiny of the documents, it was noticed that there was a short payment of duty on 7.919 MT of Steel products on the basis of the private document dated 5.9.1997 wherein duty involved Rs. 28,508/- In the adjudication order, the Joint Commissioner of Central Excise confirmed the demand of duty on shortage of raw material and adjusted the same amount as deposited by the appellant and imposed penalty of Rs. 10,000/- under Rule 173Q of the Central Excise Rules for violation of various provisions of Central Excise Rules. He further confirmed the demand of duty of Rs. 28,508/- and imposed penalty of equal amount. By the impugned order, the Commissioner (Appeals) set aside the adjudication order. Hence, the department filed the present appeal.

2. The learned D.R. on behalf of the appellant submits that the Commissioner (Appeals) while allowing the appeal of the respondents failed to consider the fact that the stock of finished goods was arrived at in the presence of the independent panches and representative of the respondent. He submits that the respondent did not protest against the shortage noticed in the stock. He also submits that the demand of duty is not barred by limitation in as much as central excise officers detected shortage during stock verification and, therefore, he relied on the larger Bench decision of the Tribunal in the case of CCE, Ahmedabad v. Core Healthcare Ltd. 2006 (195) ELT 170 (Tri.-Mumbai).

3. The learned advocate on behalf of the respondent submits that entire demand of duty is barred by limitation. In this case, the shortage was detected on 26.12.1997 and show cause notice was issued on 20.4.2001.

He further submits that in this case, there is no suppression of facts with intent to evade payment of duty and, therefore, the demand of duty is absolutely barred by time. He relied upon the following case laws:Rivaa Textile Inds. Ltd. v. CCE & C, Surat-I 2006 (197) ELT 555 (Tri.-Mumbai).

2. CCE, Indore v. Prashant Electrode 2006 (72) RLT 760 (CESTAT-Del.).CCE, Trichirapalli v. Ravishankar Industries Ltd. 2002 (150) ELT 1317 (Tri.-Chennai).

He further submits that it is revealed from the panchnama that the respondent paid duty under protest and they have not accepted the shortage. He further submits that the entire stock taking was done on the basis of eye estimation.

4. After hearing both sides and on perusal of the record, it is revealed from the record that on 26.12.1997, the central excise officers verified the stock and ascertained the shortage of raw material. The respondent immediately debited the duty. It appears from the Order-in-appeal that the director of the company Shri N.K. Dalal informed the officers the method of stock verification on the basis of average weight of the ingots. The learned advocate drew attention of the Bench to the statement of Shri N.K. Dalal wherein he stated that they received material on metric tonne basis but at the time of issuance of material, the actual weight is not taken and; thus due to wrong accounting, this shortage of raw material. He also drew attention of the Bench to the panchnama wherein it is stated that they received alloy steel according to weight but do not weigh the same at the time of issue of production and RG-1. The shortage found in the Alloy Steel can be due to this eye estimation. It is seen from record that the weighments were carried on as per direction of Shri N.K. Dalal, director of the respondent company. It is pertinent to note that stock of finished goods were found correct on physical verification. Thus, I find force in the submission of the learned D.R. that the respondent cannot take plea in respect of shortage of raw material that the verification was done on eye estimation. In the case of CCE, Indore v.Decora Tubes Ltd. , it has been held by the Tribunal that method of weighment being generally prevalent industry and having been accepted by assessee as well, to be considered as correct. The learned advocate submits that the demand of duty is barred by limitation. The case laws cited by the learned advocate are related to the refund of duty and different facts, therefore, the same are inapplicable herein. So, the demand of duty on the shortage of stock is correct. Regarding demand of duty of Rs. 28,568/-, it appears from the record that it was raised on the basis of private document dated 5.9.1997. The learned advocate submits that the alleged shortage approximately 2% of the total stock, which is negligible. I find force in the submission of the learned advocate. It is important to note that the alleged shortage was based on mere private document and, therefore, the demand of duty of Rs. 28,568/- is not sustainable. Accordingly, the demand of duty of Rs. 28,568/- and the penalty of equal amount are set aside and the appeal is otherwise rejected.