Camex Intermediates Limited and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Oct-26-2007

Reported in : (2008)(124)ECC153

Judge : A Wadhwa

Appellant : Camex Intermediates Limited and

Respondent : C.C.E.

Judgement :

1. Learned Advocate appearing for the appellants submits that after filing the appeal and the stay petition before the Tribunal, they have been compelled to deposit the entire amount of duty, fine and penalty, as confirmed by the impugned orders by the jurisdictional Central Excise authority. As such, the stay petition has become infractuous.

The same is disposed of accordingly and I also decide the appeal itself with the consent of both the sides.

2. The appellants are engaged in the manufacture of organic chemicals.

Their factory was visited by the Central Excise officers on 1.9.99. On verification of the stock, it was found that the finished goods totally valued at Rs. 1,45,440/- were in excess than the recorded balance in RG-1. Further, the raw materials valued at Rs. 1,96,362/- were found in excess than the recorded balance in RG-23A part I register. On being questioned, the Director of the company in his statement clarified that the production was of the previous day and was yet to be entered in RG-1 record. In respect of raw materials, he explained that either the same was received on the previous day or the verification was not on actual basis.

3. Based on the above, proceedings were initiated in the show cause notice against the appellants for confirmation of demand and confiscation of excess seized goods and imposition of penalty. The said show cause notice culminated into an order passed by the Assistant Commissioner confirming duty of Rs. 54,688/-. He further confiscated the goods with an option to the appellant to redeem the same on payment of redemption fine of Rs. 85,000/-. Penalty of Rs. 54,688/- was also imposed along with imposition of personal penalty of Rs. 10,000/- on the Director. The said order was upheld by the Commissioner (Appeals).

Hence the present appeals.

4. First of all, I would like to observe that when the finished goods were found and seized and subsequently were not redeemed by the appellants, how the Central excise duty in respect of the same can be confirmed by the original adjudicating authority and upheld by the Commissioner (Appeals). The finished product was admittedly lying in the factory premises and was not cleared by the appellant, in which case, confirmation of demand of duty is not justified at all. Not only that, I find that the jurisdictional Central Excise authorities have compelled the appellants to pay the duty amount even when the goods were not redeemed and cleared by them. This happened when the stay petition was pending before the Tribunal. In any case, the confirmation of demand of duty in respect of the seized goods which are lying in the factory premises is against the basic excise law. In any case, I find that it is not the revenue's case that the said goods were meant for clandestine removal. As regards the findings arrived at by the Commissioner (Appeals) to the effect that appellants have failed to account for their manufactured goods in RG-1 register, the appellants have already explained that the said production was of the previous day and was yet to be entered by the time of visit of the officers. This explanation tendered by the Director in his on-the-spot statement has not been rebutted by the revenue or found to be incorrect. As such I find no justification for

confiscation of the said finished goods. The appellants will pay the duty in respect of the same at the time of clearance of the goods after entering the RG-1 register.

5. Apart from the above, I find that the authorities below have also confiscated the excess found raw materials along with confirmation of demand of duty of excise in respect of the same under the provision of Section 11A of the Central Excise Act, 1944. These raw materials are not manufactured by the appellants. I fail to understand as to how their non-entry in the statutory records made the appellant liable to pay duty of excise in respect of the same. Even the confiscation of the same under the provisions of Rule 25 of the Central Excise Rules, 2002 is not warranted inasmuch as the said provisions provides for the finished goods and not the raw material as held by the Tribunal in the case of C.C.E. & Cus., Surat v. Dincotex Private Ltd. . I find no justification for confiscation of grey fabrics or demand of duty in respect of the same from the appellants.

In view of the above, I set aside the confiscation of the finished product and the raw materials and confirmation of the demand of duty in respect of the raw material. Duty in respect of finished goods, on the finding as already observed, would be paid by the appellants at the time of clearance of the goods. As regards the penalty, I find that admittedly, the appellants had not maintained the records properly though there may not be any intention on their part to clear the same clandestinely. For non-maintenance of record, penalty under the provision of Rule 25 is imposable. I, accordingly, reduce the penalty under the said provision on M/s Camex Intermediates Ltd. to Rs. 2,000/- (rupees two thousand only). Penalty on the Director is, however, set aside.