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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-1989

Reported in : (1990)LC428Tri(Delhi)

Appellant : Himco Laboratories

Respondent : Collector of Central Excise

Judgement :

1. Show cause notice dated 28-1-1977 alleged contravention of the provisions of Rules 9(1), 52A, 53, 173F and 173G of the Central Excise Rules, 1944 on the basis of the following allegations given in the show cause notice :- "Inasmuch as the Audit Party of Accountant General, Haryana, Chandigarh during the course of Audit of Accounts of the said licensee for the period from 4/73 to 3/76 found that the party had cleared excisable goods valued Rs. 1,22,118 from the factory without payment of Central Excise duty of Rs. 9158/; leviable on the goods under gate passes during the period 19-7-1973 to 17-7-1973* without debiting the amount of duty in their personal Ledger Account. The production and the clearance of the goods appears to have not been accounted for in the R.G.I Register of the party. The details of all such clearances are enc!6sed herewith as Annexure A." 2. Accordingly, the appellants herein were asked to show cause as to why duty of Rs. 9158/- should not be demanded from them under Rule 10A and why penalty should not be imposed upon them.

3. The appellants in reply to their show cause notice stated that their Chief Chemist, the authorised signatory, disputed the authenticity of the gate-pass book,

when the audit party asked him to authenticate the particulars which were reportedly taken by the Audit Party from the said gate-pass book. Department's case, as found by the Deputy Collector, the adjudicating authority is that the appellant cannot go back on its own authentication of the particulars noted down by the Audit Party now when the gate-pass book was returned to the appellants' authorised signatory by the Audit Party. Appellants' allegation that the gate-pass book was forged, not bearing the signatures of the authorised signatory and lots of other discrepancies in the purported gate-pass Date appears to be wrong pointed out by the appellants, vis-a-vis the normal practice of maintaining the gate-pass books, were not accepted by the adjudicating authority on the sole ground that once authentication of particulars noted by the Audit has been made by the appellant, he cannot go back. The adjudicating authority also doubted whether the gate-pass book produced by the appellants, during the adjudication proceedings is the same from which the Audit Party detected the evasion, noted the particulars, got them authenticated and then returned it. The adjudicating authority, therefore, demanded the said amount of duty and imposed a penalty of Rs. 25.000/- on the appellant. Their appeal before the Collector of Central Excise (Appeals) was in vain.

4. Now, in appeal before the Tribunal, the appellants have, inter alia, urged that the version of the Deputy Collector that Shri D.P. Singhal, Chief Chemist of the appellants authenticated the details copied out from the impugned gate-pass book is incorrect. The Audit Party took signatures, it is alleged, on one page alone. They did not take his signatures in token of the correctness of copying these particulars. It is stated that Shri Singhal at no stage admitted that the impugned gate-pass book or the particulars copied out belonged to the appellants or the signatures appearing on the said impugned G.P.1 book were his.

5. The learned advocate for the appellants has urged that the above ground, among other grounds, was taken up in appeal before the Collector (Appeals) (Ground No. 2) but he has, in a short order, merely brushed aside the pleas of the appellants as an after-thought, merely endorsing the order of the adjudicating authority. The learned advocate submits that the fact of authentication and the manner of authentication of the alleged particulars of clearances without payment

of duty has not been spelt out hi the show cause notice. It merely says that the "Audit Party...during the course of Audit Accounts...found that the party had cleared excisable goods valued Rs. 1,22,118/- from the factory without payment of Central Excise duty of Rs. 9158/-...." The learned advocate, therefore, submits that the findings of the adjudicating authority are beyond the allegations in the show cause notice. Therefore, the impugned order should be set aside on this ground alone. He relies for this proposition on -(North Bihar Agency v. State of Bihar) 6. The learned advocate further urges that the Tribunal has laid down in 1986 (25) E.L.T. 798-Para 14 (Swastik Tin Works v. C.C.E., Kanpur) that a show cause notice should not be issued merely on the basis of an audit objection; it should be issued by the department after making proper enquiry/investigation into the allegations or objections made by the audit and satisfying itself about the prima facie strength in the allegations. In the instant case, no such enquiry/investigations were made before issuing the show cause notice. Instead the enquiry/investigation undertaken by the department was after issuing the show cause notice, with the sales tax authorities and purported buyers of the goods clandestinely removed and no evidence of any such alleged removal was found by the department. He submits that despite these facts, the appellants are sought to be punished for lapses of the Audit Parry who ought to have either detained the alleged gate-pass book, in its own possession, or even if returned to the appellants, it should have been signed by the incharge of the Audit Party or the Auditor concerned who noted the particulars from that gate-pass, to substantiate the case of alleged evasion. Accordingly, he submits that the appeal deserves to be allowed.

7. Learned SDR, on the other hand, reiterates the findings of the lower authorities. He submits that if the contention of the appellants' learned advocate are accepted, it would hamper the working of Audit Parties. These parties have no seizing powers. They only check the records and stocks, prepare statements on that basis and get them verified as correct or authenticated by the authorised signatory. Once the fact of authentication is admitted by the appellant, nothing remains in their case.

8. We have carefully considered the pleas advanced on both sides. While we agree in principle with the plea advanced by the learned SDR for the department,

we do not find that on the basis of available evidence on record, fact of authentication of the particulars of clandestine removal is clear. The show cause notice does not make any mention of it. Reply to the show cause notice, the first opportunity available to the appellants, hotly denies the fact of any such gate-pass book and authentication of the particulars. We find that the adjudication authority has assumed the fact of authentication of removal particulars in his findings in the order-in-original without confronting it to the appellants. Collector (Appeals) has also glossed over this argument.

We, therefore, find sufficient force in the plea of the appellants' learned advocate and his reliance on AIR 1981 SC 1758. We are also not aware of this fact because the exact alleged verification or authentication by Shri D.P. Singhal has not been produced before us by the department; nor is it available in the impugned order. This to our mind is crucial to the decision of this case. In the absence of the exact copy of the particulars noted down by the Audit Party and the form of alleged authentication or verification of such particulars, we are unable to give a categorical finding.

9. In normal circumstances, we would have remanded this case back to the adjudicating authority for looking into the above aspect and decide the matter afresh. But we find that the stakes of revenue are merely below Rs. 10,0007- (Rupees ten thousand only), apart from the penalty of Rs. 25,000/- imposed by the original authority, no important issue having recurrent effect is involved and the appellants have undergone the litigation for a period of 12 to 13 years, therefore, we are reluctant to remand. We observe that the lower authorities have not followed the matter properly right from the stage of issuing the show cause notice. Various circumstances and discrepancies pointed out by the appellants, though do not conclusively decide the matter in their favour, entitle them to benefit of doubt. We extend this benefit.

Accordingly, the appeal is allowed.

10. Before parting, we would like to observe that the case highlights deficiency in procedural law insofar as Audit Parties of the Accountant General are concerned in such cases; inspection and audit of records and stocks of goods is a routine

procedure and one of substantial importance in the Excise system. It is time that a suitable procedure on appropriate foundation of rules is evolved so that Revenue Audit parties are able to discharge their due duties and the cases do not flounder for lack of procedure.