

Dates Discs Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-01-1991

Reported in : (1992)(60)ELT353TriDel

Appellant : Dates Discs Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Shri Rajesh Chibber, learned advocate for the applicants states that the allegations in the show cause notice were made regarding evasion of payment of duty on goods worth Rs. 9.75 lakhs. He, however, submits that there was no evasion at all in this case because in the classification list submitted by the applicant No. (1) it has been mentioned that they would avail Notification 214/86 dated 25-3-1986 for doing the job work for M/s. Dass Hitachi Ltd., the 2nd applicant herein. What has happened is, according to the learned advocate, that inputs steel sheets were transferred by M/s. Dass Hitachi after availing of the MODVAT credit to Dates Discs Ltd. who manufactured the components for electricity supply meters on job work basis and transferred back them to Dass Hitachi. These components were used by the latter in assembling the electricity supply meters which were later on cleared on payment of duty. Thus, he submits that there is no duty involved at all in this manufacture and therefore, the question of evasion of payment of duty cannot arise. He, however, admits that there was a contravention of procedure laid down in 57F(2) inasmuch as internal challans were issued by Dass Hitachi to Dates Discs and their transfer back to Dass

Hitachi. This at best, he submits is a procedural lapse for which not much cognizance should be taken. Accordingly, learned advocate submits that the penalties on the two applicants are not at all sustainable and in any case very harsh and totally unwarranted in the facts and circumstances of this case.

1.1 Regarding the confiscation of goods worth Rs. 77,320/- seized from Dates Discs factory premises as unaccounted for, the learned advocate has submitted that goods worth Rs. 25,620/- were electric supply meters components and therefore, no duty on them was involved. He submitted that entry thereof could not be made on account of rush of work.

However, there was no intention to evade payment of duty in respect of those goods and proper explanation was given to the authorities on the spot. The learned advocate has also submitted that contravention of Rule 57F was not invoked in the show cause notice and therefore, the penalty as mentioned above should not have been imposed by the adjudicating authority.

2. On the plea of financial condition, learned advocate submitted that Dass Hitachi is in a poor financial condition to make any payment.

However, in view of the strong prima facie case in his favour, he does not press for the financial condition very strongly.

3. Opposing the stay application, learned JDR Shri S.K. Sharma for the Revenue urges that allegation of contravention of Rule 57F has been made in the show cause notice in para (xi) and therefore, it cannot be said, as has been urged, that no penalty can be imposed under Rule 57F(2) read with Rule 173Q. He, however, reiterates the findings of the adjudicating authority of the impugned order.

4. We have considered the pleas advanced on both sides. We find force in the plea of the learned advocate for the applicants that there is no evasion of duty involved in these cases. At best it is a contravention of procedure under Rule 57F under the MOD-VAT scheme. Therefore, having regard to the facts and circumstances of the case we allow the stay petitions unconditionally.