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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-1995

Reported in : (1995)(79)ELT698TriDel

Appellant : Complex Steels (P) Ltd.

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Shri. S.P. Bhatnagar

Judgement :

1. The above appeal arises out of the order of the Additional Collector, New Delhi confiscating 11.250 MTs of steel ingots cleared without payment of duty and 31.660 MTs of steel ingots not accounted for in the statutory records, with an option to redeem the same on payment of a fine of Rs. 1 lakh, levying duty of Rs. 4311.56 on steel ingots cleared without payment of duty and imposing a penalty of Rs. 50,000/- on the appellants. In addition the truck used for transporting the goods without payment of duty was also confiscated with option to redeem on payment of a fine of Rs. 1 lakh.

2. The brief facts of the case are that on 16/17-6-1988 Preventive Officers of Central Excise Division I, New Delhi intercepted the appellant's truck bearing registration No. DIL 740 containing 125 pieces of steel ingots valued at Rs. 66,000/- and involving Central Excise duty of Rs. 4311.56, which was seized together with the truck under the reasonable belief of their liability to confiscation, since the goods were not transported under cover of valid duty paying documents

and were only accompanied by a dharam kanta receipt and one challan of Gupta Associates, Wazirpur Industrial Area. Immediately thereafter the appellant's factory was visited, relevant records were checked and shortage of 94.700 MTs of steel ingots compared to the recorded balance in the RG-I register was detected. Besides this, the appellants could not account for 1404 pieces of steel ingots weighing 126.360 MTs found in excess of the recorded balance in the RG-I register as on 22-6-1988 and which were thus seized on 29-6-1988. On 22-6-1988 appellants informed the Department that certain stock of ingots lying in the bank godown under lock and key of the bank were not taken into consideration while calculating the exact quantity of stock.

Statements of various officers of the appellant were recorded as also that of the Bank Manager who stated that 125 MTs of steel ingots were actually pledged with the bank.

3. A show cause notice was issued on 2-11-1988 proposing recovery of duty on 11.250 MTs seized and 94.700 MTs found short, confiscation of the seized ingots and confiscation of 126.360 MTs found in excess of the recorded balance, etc. The appellants replied to the show cause notice urging inter alia that clearance of 125 steel ingots weighing 11.250 MTs under cover of challan was only an omission due to administrative officer being on leave, that immediately on the mistake being discovered, the appellants deposited the duty in their PLA.Regarding shortage and excess, the appellants submitted the account of two types of ingots manufactured by the appellants had to be examined before arriving at shortage or excess in stock which was not done by the Department and if both accounts were looked into, the shortage and excess stocks are tallied, there was neither excess nor shortage.

4. The adjudicating authority accepted the claim of the appellants that both types of ingots manufactured by them to be taken into account while arriving at excess or shortage, and that a certain quantity of ingots were pledged with the bank on 14-6-1988. However, after adjustment between excess and shortage, he found that there was still a net excess of 31.600 MTs of steel ingots which he confiscated with option to redeem and also confiscated the quantity of steel ingots seized from

the truck on 16/17-6-1988 with option to redeem on payment of duty and fine. The truck was also confiscated with option to redeem on payment of a fine and a penalty of Rs. 50,000/- was imposed on the appellant. Hence, this appeal. The appellants admit the liability to duty on 11.250 MTs of steel ingots and submit that they have already paid duty leviable thereon. Therefore, this appeal is confined to confiscation of the quantity of unaccounted steel ingots and the confiscation of the truck and personal penalty.

5. Shri S.P. Bhatnagar, learned Counsel for the appellants, submits that while computing the shortage of 94.70 MTs of steel ingots on 17-6-1988, the department has not taken into account 12.725 MTs of ingots produced on 16-6-1988 (the date of detection of shortage) but has only given allowance for 5.76 MTs of ingots, both found lying in the factory on that day. He submits Mathematical brief for the shortage/excess and contends that from the same, it would be very clear that there is neither shortage nor excess. But in the event of any doubt in this regard, the benefit should be extended to the appellants.

6. Shri Sanjeev Sachdeva, learned DR submits that even if the production of 12.725 MTs on 16-6-1988 is taken into account, it would have to be accounted for both in the physical stock as well as taken into account in the RG-I register and this would still leave an excess of 31.600 MTs which the appellants have not been able to satisfactorily explain till date.

7. We have carefully considered the submissions of both the sides. The Mathematical brief submitted by the appellants is as follows - MATHEMATICAL BRIEFI. Alloy Steel (in Metric tons) Ingots Date o.b.

Production Total Clearance c.b.Stock as from 16.6.1988 127.250 12.725 139.975 26.790 113.185tabulatedchart on page Since 12.725 MT manufactured on 16.6.1988 lying in factory wasnot40 of the taken into account by the department, thenappeal memoStock position 16.6.1988 12 250 - 127.250 26.790 100.460 5.760 94.700as per depart- This short quantity of 94.700 MT, being part of the pledged stockstock position 16.6.1988 127.250 - 127.250 26.790 100.460 5.760 + Nilafter adjustment 94.700would be ------ and with this adjustment there is no shortage herein; the balance pledged stock of 31.660 MT (126.360 - 94.700) to be

accounted for in stock of non-alloy steel which the department, did not takeinto account at all as per appellants plea and admitted by the Additional II. Non-alloy (in metric tons)Steel Ingotsfrom 16.6.1988 49.210 - 49.210 - 49-210 31.660 with bankpage 40 of but 11.250 MT + 11.250 seized onappeal memo cleared + 2.960 16/ i.e. shortage of only 3.34 MT (49.210 - 45.870), being due to approx. weight taken.

of the total stock weight of 149.670 MT (100.460 (I) + 49.210(11), the break up would be 126.360 (bank stock) + 5.760 (alloy steel stock found lying by the department on 17-6-1988) + 11.250 (seized) + 2.960 (non-alloy stock in factory) = 146.330 MT, shortage being merely 3.34 MT i.e. merely 2.2% and that also being due to approximations in weight as stated above".

We agree with the learned DR that the production of 16-6-1988 has to be included both in the physical stock as well as in the quantity reflected in RG-I register and cannot be taken into account only in the RG-I register, as argued by the appellants. The position would then be as follows - (A) Without taking into account the production of 16-6-1988 Balance on physical : 126.300 pledged with bankverification + 5.760 actually found by CE officers on 16-6-1988 Quantity as per RG-I : 100.460Excess : 31.600 MT _____ (B) Taking into account the production of 16-6-1988 Balance 3on physical : 126.300 with bankverification + 5.760 _____ Total 144.785 MT (production of 16-6-1988 notQuantity as per RG I 113.185 MT _____register (as claimed by Excess :31.600 MT"appellant) 8. Therefore, there is still no difference in excess whether calculated with or without taking into account the production of 16-6-1988. Hence we hold that the department has established the charge of non-accountal in the statutory records. In these circumstances, the confiscation is upheld. However, we reduce the redemption fine of Rs. 1 lakh imposed by the Adjudicating authority to Rs. 50,000 and penalty to Rs. 25,000/-.

We also uphold the confiscation of the truck but in the circumstances, we reduce the fine to Rs. 50,000/-.

9. Subject to the above notification, we uphold the impugned order and reject the appeal.

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