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Bhag Polymers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-27-1995

Reported in : (1995)(78)ELT41TriDel

Appellant : Bhag Polymers

Respondent : Collector of Central Excise

Judgement :

1. When this application for stay came up, it was decided with the consent of both sides to dispose of this appeal on merits.

2. The waiver of pre-deposit of penalty of Rs. 5,000/- is therefore, granted.

3. I now proceed to decide the appeal on merits. The appeal is directed against the order of the Assistant Collector of Central Excise, New Delhi [which has been confirmed by the Collector of Central Excise (Appeals), New Delhi]. She ordered the confiscation of PVC compound of value Rs. 96,000/- under Rule 173Q of the Central Excise Rules, with an option to redeem of payment of fine of Rs. 10,000/-. The Assistant Collector has also confiscated 1725 kgs. of polypropylene under the same Rule with an option to redeem it on payment of fine of Rs. 5,000/-. The Assistant Collector also imposed penalty of Rs. 5,000/- on the appellant.

4. Action has been taken on two counts. The first count is that 3200 Kgs. of fully manufactured plastic granules duly packed were found in excess of the balance recorded in RG-1 register by the central excise officers. The second ground is that

the officer has found 1725 kgs. of polypropylene which is a raw material used in the manufacture of the finished product in excess of the balance recorded in RG - 23 part - 1 register.

5. I have heard Shri Naveen Mullick, advocate for the appellant and Shri B.D. Bhagat, JDR for the department.

6. The appellant's argument with regard to the PVC compounds which was reiterated by Shri Mullick is that it was not in fact, fully finished marketable form because it was required to be tested and to be sorted.

This argument had not found favour with the Assistant Collector who has said that it was not necessary that the goods should be subjected for testing before their entry in RG-1 register. On being asked, Shri Mullick said that he did not have any details of the testing and sorting which was to be undertaken. He also agreed that there was no evidence that this was required to be done or was generally being done in the factory, except the statement during the seizure as reflected in the Panchnama for Shri Inder Sain Malik, proprietor.

7. I am not able to agree that the appellant has shown that the goods required to be tested before they could be marketed. It is on record that the goods were in packed condition in the form in which they would be ordinarily sold. This is hard to believe that after having been packed in such a manner they would be subjected to test which would involve unpacking and re-packing. I have already noted the total absence of evidence as to the nature of the testing process or its practice in the factory. There was nothing to show that any of the compounds had ever been sent to the laboratory for testing. I must therefore, uphold the finding of the lower authorities in this regard.

There is however, much to be said for Shri Mullick's argument that the show cause notice did not allege any intent to evade duty, and that the Assistant Collector did not find any such intent. There is no rinding that the goods had been manufactured otherwise than from the raw material which was entered in the statutory record. There is in fact, nothing in the show cause notice to say that the appellant had failed to enter details in RG-1 register with a view to removing the goods

clandestinely. The reliance placed by Shri Mullick on the decision of this Tribunal in Lili Foam Industries (P) Ltd. v. Collector of Central Excise,(Tribunal) and Kellner Pharmaceuticals Ltd., Kanpur v. Collector of Central Excise, Kanpur, 80. There is a clear failure to maintain the accounts. What the point made by D.R. in this regard is that such proper maintenance of account is a of the SRP system has great force.

8. I now turn to the polypropylene. Here there is some lack of clarity in the Asstt. Collector's order. On the one hand, she says that there was an excess of 1725 kgs. of polypropylene over quantity shown as balance in RG 23A Part 1, on the other hand, she orders in the operative portion that if the polypropylene is not redeemed on payment of fine, the credit of duty taken on it should be reversed. It is evident that credit has already been taken on the quantity of polypropylene. This could not have been done unless it had been entered in RG 23A Part 1 register. The appellant's argument is that while an entry for issue of some of the entries to the shop floor may be made, that there is a time lag between this entry and the actual consumption of the goods in the manufacturing process. Since, when the debit entry has been made, the quantity was therefore, reduced from the dosing balance as shortage has taken place. He further argued that in any event that there is no question of any danger to revenue. It has further been alleged that the appellant was trying to remove the inputs on which credit has been taken clandestinely. The Assistant Collector says that stock in balance has shown nil with the intent to evade payment of duty by removing inputs without payment of duty on them as required under Rule 57F. There is however, no evidence to substantiate this claim.

9. In the circumstances, I set aside the confiscation of PVC and polypropylene. Since failure to maintain accounts properly has been established, I reduce the penalty imposed from Rs. 5,000/- to Rs. 2,000 (rupees two thousand only).

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