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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-1995

Reported in : (1995)(78)ELT512TriDel

Appellant : Western Transformer and

Respondent : C.C.E.

Judgement :

1. This is an appeal filed by M/s. Western Transformer & Equipment (P) Limited against order-in-original No. 28/90, dated 8th May, 1990 passed by Additional Collector of Central Excise and Customs, Jaipur ordering confiscation of 115 Transformers manufactured by them which had not been entered by them in their statutory stock account, giving them the option to redeem them on payment of redemption fine of Rs. 2 lakhs in lieu of confiscation. In addition penalty of Rs. 50,000/-had also been imposed on them under Rule 173Q of the Central Excise Rules for contravention of Rule 173G of Central Excise Rules.

2. The appellants were represented by Shri L.P. Asthana, learned Advocate during the hearing of the appeal. He referred to the contentions raised in the appeal and the subsequent written submissions given by them. He emphasised the point that the transformers in question were in the factory premises only and there was no attempt by them to remove them from the factory without payment of duty. Shri Asthana cited the Tribunal decision in Garden Silk Mills v. Collector of Central ExciseNew Polymers Industries v. Collector of Central Excise 145. There was no case for confiscation of the goods and the penalty imposed is extremely harsh.

The Additional Collector had wrongly rejected their plea that the transformers in question had not reached the RG-1 stage as the process of manufacture and the testing and fitment of certain parts was not completed. The Additional Collector has drawn erroneous conclusions based on his observations following his visit to their factory for inspection of the goods. He has relied upon the same for drawing adverse conclusions against them without putting them under notice for the same. The appellants had nothing to gain by not entering the particulars of the goods in their RG-1 account if they were fully manufactured. There was no attempt by the appellants to remove the goods without payment of duty. More than 99 per cent of their goods are cleared to Rajasthan State Electricity Board and Central Excise duty is recovered from them by the appellants. Shri Asthana pleaded in conclusion that the appeal be allowed and impugned order set aside.

3. Shri M.M. Mathur, learned Joint Chief Departmental Representative stated in reply that the Additional Collector has considered all the aspects and passed a correct order. It was clarified by the company's representative to the Additional Collector when he visited their factory that the transformers were coated with grey paint only after manufacture is complete. In some of the transformers the appellants had given a coating of Red Oxide over the grey paint only to mislead the departmental officers that they were not fully manufactured transformers. The confiscation of the offending goods with option to redeem them on payment of fine in lieu of confiscation and the imposition of penalty are fully justified. The order deserves to be upheld and the appeal dismissed, concluded Shri Mathur.

3A. We have considered the submissions. We have gone through the record. We have taken note of the Tribunal decisions cited on behalf of the appellants. The confiscation and imposition of penalty have been ordered only on the ground that the fully manufactured transformers had not been accounted for in their statutory RG-1 register. Contravention of Rule 173G has been held out against the appellants. It has however, not been indicated which sub-rule or which part of this very lengthy Rule has been contravened. The heading of the Rule is procedure to be followed by the assessee. They have also pleaded that Shri Jafri who was handling the Central Excise work had met with an accident and in his absence other person had to attend his work. Actually they had removed 38 transformers

without posting them in the Register but Central Excise duty had been paid and Gate Pass issued. The Additional Collector had noted this and had not proceeded against them for the same. The conclusions drawn by the Additional Collector that the appellants had attempted to mislead the departmental officers by applying a coat of Red Oxide paint over the Grey paint does not assume significance to justify the confiscation of the goods and imposing penalty of Rs. 50,000/- on them. The case law cited on their behalf supports their case as the goods were available in the factory premises and there was no attempt for clandestine removal without payment of duty. As regards the question whether the transformers had reached the RG-1 stage and whether the appellants had failed to enter the details of manufacture in the RG-1 Register, we find that the Additional Collector had based his findings upon his personal observations during his visit undertaken after the personal hearing was over. He has found that 65 transformers were painted with red oxide. As he was informed by the officer who had originally seized the goods and who was also available at the time of his visit that these were painted grey at the time of seizure, he tested the upper surface of some of the transformers when it was found that underneath the coating of red oxide the transformers were painted grey. The appellants could not explain why once the transformers were painted grey which also they had stated was given only after they were complete in all respects were subsequently again painted with red oxide. This he has held showed the presence of mala fide intention on their part. We find that this finding has been questioned by the appellants both on facts and on a question of law. On the question of law the appellants have submitted in the appeal that the Additional Collector by carrying out the spot inspection and without disclosing his observations and giving them the opportunity of making their submission had decided the case against them. Reliance has been placed on the judgment of the Honourable Supreme Court in Koisan Kumar Singh v. State of Manipur reported in 1986 (25) E.L.T. 145 (SC) wherein they observed :- "Normally a court is not entitled to make a local inspection and even if such an inspection is made, it can never take the place of evidence or proof but is really meant for appreciating the position at the spot."Pritam Singh v. State of Punjab "A Magistrate is certainly not entitled to allow his view or observation to take the place of evidence because such view or observation of his cannot be tested by cross-examination and the

accused would certainly not be in a position to furnish any explanation in regard to the same." Apart from this legal position which supports the appellant's case, the facts are also on their side. The Additional Collector has gone by the grey paint underneath the red oxide paint in some of the transformers seen by him. We find that the appellants have contested this contending that painting is no criteria for the testing. They have disputed his observation that they had stated before the Additional Collector that the transformers had been painted due to the mistake of the painting staff. They have referred to their letter dated 8-3-1990 written to the Collector wherein they had pointed out that the seized 148 transformers were only partly manufactured as they were not then fitted with an essential part viz. silica gel breather and also the necessary testing of each transformer was still to be done by their Engineer. They stated that after completing the above two processes the transformers were to be brought to the finishing room to be painted. Only the primary coating of red oxide paint had been done on 98 transformers and 2 coats of finishing paint was to be done on them while for 50 numbers only a single coat of grey paint was given and the second coat was to be given. Thereafter the Rating and Name Plates giving the serial number, capacity, rating and the technical details were to be affixed. They had written a similar letter to the Superintendent on 24-2-1990, three days after the seizure. We also notice that a report on the transformers prepared by the officers on 4-5-1990 which we note is the date of the Additional Collector's visit to their factory shows that for 50 transformers the following items were not there :- These were filled with transformer oil and oil gauges were fixed. They were grey coloured. For 98 Transformers filled with transformer oil and fitted with oil gauge and which were red oxide coloured, the same 5 items were not fitted. In view of this position, it is not possible to agree with the finding of the Additional Collector based on his observations and the colour coating only that the transformers had reached the RG-1 stage and that the appellants had not brought them on record (RG-1 register). We, therefore, accept the plea of the appellants in this regard and set aside the confiscation and consequently the fine in lieu of confiscation.

4. The appellants have admitted their lapse in not maintaining their RG-1 record properly for which they have given the reason that their concerned clerk, Shri Jafri had been seriously injured with fractured hands. In his absence another person, a

sales clerk is reported to have handled the work and he had cleared 38 transformers for which duty was paid and Gate Passes were issued though he had not posted the entries in the RG-1 register. The irregular maintenance of statutory records, whatever be the circumstances, is contravention of Rules 53, 173G and 226 of Central Excise Rules attracting penal provisions of Rule 173Q as brought out in the order. Such non-maintenance of records as required was, however, not with any intent to evade duty and no evasion of duty has also been alleged or established. However, in view of the extenuating circumstances of the case, we feel the ends of justice would be met if a token penalty of Rs. 2,000/- (Rupees two thousand only) is imposed on them. We accordingly reduce the penalty amount imposed by the Additional Collector from Rs. 50000/- to Rs. 2000/-. The appeal is partially allowed as above. The appellants will be entitled to consequential reliefs.

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