

Collector of Central Excise Vs. Nabha Solvex (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-1995

Reported in : (1996)(81)ELT225TriDel

Appellant : Collector of Central Excise

Respondent : Nabha Solvex (P) Ltd.

Judgement :

1. This revenue appeal is directed against Order No. 554/C/CHD/91, dated 19-4-1991.

2. Arguing for the Revenue, the Id. D.R. submitted that the Central Excise Officers of Patiala on a visit to the premises of the respondents, who hold L-6 licence for bringing duty free hexane under Chapter X of Central Excise Rules, 1944, under Notification No.75/84-C.E., dated 1-3-1984 as amended, found on actual verification a shortage of 29,595 Litres of hexane. Since no satisfactory explanation except stating that 18000 Litres were in process in Plant and the balance was in Batch Plant, was given, the Dy. Collector rightly confirmed a demand of Rs. 57,488.29 and also imposed a penalty of Rs. 1,000/- Collector (Appeals) has set aside the orders of Dy. Collector in regard to confirmation of the demand on the ground that the Deptt.

has failed to produce any evidence regarding clandestine removal of goods. He, therefore, prayed that order of Deputy Collector be restored.

4. I have heard the Id. D.R. and perused the records of the case.

Collector (Appeals) has observed that no evidence has been produced by the Deptt. to prove that the quantity found short was removed clandestinely, and that there is force in the arguments of the appellants that there could be no reason to clear the goods received under Chapter X without payment of duty when other manufacturers could also get it free of duty under Chapter X.5. Under Rule 196, if any excisable goods obtained under Rule 192 are not duly accounted for as having been used for the purpose and in the manner stated in the application or are not shown to the satisfaction of the appropriate officer to have been lost or destroyed by natural causes or by unavoidable accidents during transport from the place of procurement to the applicant's 226 EXCISE LAW TIMES [Vol. 81 premises or during handling or storage in the premises approved under Rule 192, the licensee is obliged to pay duty on such goods. This is a specific provision, therefore, which requires payment of duty on goods not satisfactorily accounted. The onus therefore, in this regard is primarily on the respondents claiming concession and, therefore, observations regarding clandestine removal may not be the deciding factor. The order of the Dy. Collector, however, itself indicated that stocks were verified through Dip Method for which "only a working copy of the calibration chart was produced and the calibration chart duly approved by the competent authority was not produced". This itself indicates that actual verification, on which shortages are alleged, was not conducted in accordance with the approved calibration chart. This itself would cast serious doubts on the authenticity of the figures actually arrived at. There is no satisfactory finding in regard to plea of 18,000 Litres of hexane advanced by Sh. Rajesh Kumar, when he was questioned by the officers. The Dy. Collector himself in his order in this regard states that "when the party had taken specific plea, the same could be verified by physical verification of the Plant rather than any theoretical argument". Having observed this, the Dy. Collector does not mention why exactly physical inspection to verify this plea, when the specific plea about the shortages was advanced before the officers, was not carried out. Since the stock verification was not conducted in accordance with the approved calibration chart, not any investigations were made into the plea advanced by the respondents, Collector (Appeals) was correct in giving relief to this extent.

6. I, therefore, reject the revenue appeal and uphold the impugned order.

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