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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-13-1995

Reported in : (1996)(83)ELT313TriDel

Appellant : Nagpal Silicate and Glass Inds.

Respondent : Collector of C. Ex.

Judgement :

1. This is an appeal against the order dated 18-11-1991 passed by the Additional Collector of Central Excise, Jaipur. Appearing on behalf of the appellants Shri Pankaj Malik, learned C.A. submitted that in this case the penalty of Rs. 1,000/- was imposed on the ground that the appellants had availed Modvat credit amounting to Rs. 62,335/- without waiting for the acknowledgement of the declaration filed by them under Rule 57G(1). He added that in addition to the penalty imposed on account of alleged incorrect availment of Modvat credit a penalty of Rs. 15,000/- was also imposed on account of alleged shortage of 164.1 kgs. of goods of DPC Copper Wire with reference to the RG-1 balance and payment of duty @ 5% instead of 10% on goods valued at Rs. 5,300/- has been held as sustainable. Shri Malik submitted that there was a clear admission in the impugned order that the appellants had filed the required declaration under Rule 57G(1) and during the relevant period they were also filing RT-12 return showing the availment of Modvat credit. He contended that under these circumstances the penalty imposed under Rule 173Q(1)(a)(b) was not warranted. He added that the penalty imposed under the said rule was also not sustainable on account of the

fact that the demand issued for a period beyond 6 months on the grounds of suppression had been dropped by the Collector. In support of his contention he placed reliance on the judgment of the Supreme Court in the case of CCE v. H.M.M. Ltd., reported in 1995 (76) E.L.T. 497. Shri Malik submitted that the factory had been lying closed since June, 1987 and the officers had visited the factory in June, 1989 when the shortage of 164.1 kgs. of DPC Copper Wire with reference to the recorded RG-1 balance was deducted. He stated that the duty on the alleged shortage worked out to Rs. 942/- only. He stated that the appellants had paid differential duty of Rs. 5,300/- which was alleged to have been arising on account of payment of duty @ 5% instead of 10%.

He contended that the differential duty amounting to Rs. 5,300/- having been paid by the appellants and the alleged shortage with reference to RG-1 balance being insignificant the penalty of Rs. 15,000/- under Rule 173Q(1) was also not sustainable.

2. On behalf of the respondents Shri Y.R. Kiania, learned JDR reiterated the findings in the impugned order.

3. I have examined the record of the case and considered the submissions made on behalf of both sides. It is seen that the appellants had filed a declaration under Rule 57G(1). The only allegation was that they had started availing Modvat credit in respect of the declared inputs without waiting for the acknowledgement in respect of the said declaration. In the impugned order there is also a clear admission that the appellants were filing RT-12 return alongwith the extracts of RG-23A, Part-I and Part-II during the relevant period.

Under these circumstances I am inclined to agree with the learned C.A. Shri Malik, appearing on behalf of the appellants that the alleged lapse if any in availment of Modvat credit by the appellants without waiting for the acknowledgement of the declaration filed by them under Rule 57G(1) was purely technical. I, therefore, hold that penalty of Rs. 1,000/- imposed by the Collector on this account is not sustainable.

4. So far as the penalty of Rs. 15,000/- imposed under Rule 173Q(1)(a) is concerned it is seen that there is a clear admission by the appellants that they were not paying correct duty on the goods cleared by them since they had deposited the differential duty of Rs. 5,300/- and have not contested the allegation that the duty payable on the goods is @ 10% ad valorem and not at 5% ad valorem as paid by them. The appellants have also not explained the shortage of 164.1 kgs. of DPC Copper Wire with reference to the RG-1 balance which was deducted by the Central Excise Officers. Under these circumstances I find that the order holding that the appellants were liable for penalty under Rule 173Q(1)(a) is sustainable. However, having regard to the overall facts and circumstances of the case and also taking into account the fact that the differential duty involved I reduce the penalty imposed under Rule 173Q(1)(a) from Rs. 15,000/- to Rs. 1,000/- only.

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