

C.C.E., Allahabad Vs. M/S Hi-tech Medical Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Central Excise Appeal No.1172 of 2008-SM

Appellant : C.C.E., Allahabad

Respondent : M/S Hi-tech Medical Pvt. Ltd.

Advocate for Pet/Ap. : Shri R.K. Gupta, Authorised Departmental Representative (SDR) for the Revenue and none for the respondents.

Judgement :

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 34-CE/ALLD/2008 dated 28.2.2008, by which the prayer of the Department for enhancement of penalty from Rs.10,000/- to an amount equal to the duty involved under Section 11AC was rejected.

2. Heard the learned SDR who reiterates the grounds of appeal.

3. When the officers visited the premises of the respondent on 24.1.2006, they found some quantities of final products in excess of the recorded stock; they also found shortage of inputs on which cenvat credit was taken. The original authority

inter alia confirmed the demand of Rs.11,097/-relating to shortage of finished goods which were provisionally released; he also ordered recovery of cenvat credit of Rs.30,456/-. He imposed penalty of Rs.10,000/- on the respondent for complicity in the offence under Section 11AC of the Central Excise Act, 1944 read with Rule 15of the Cenvat Credit Rules, 2004. The Commissioner (Appeals) did not agree to the prayer for enhancement of the penalty.

4. On going through the show cause notice, it is noticed that the respondents have accepted the shortage and excesses. The Department alleged that excess found goods were kept with intent to clear them clandestinely. The Department also alleged that the short founds goods have been clandestinely removed. Both these allegations were not corroborated by any other evidences. The acceptance of shortage of inputs involving credit of Rs.30,456/- does not lead to the conclusion that the said inputs have been clandestinely removed, as sought to be contended by the Department. Under these circumstances, the imposition of penalty of Rs.10,000/- by the original authority has to be considered as adequate and there was no justification for imposition of penalty equal to the duty involved. Under these circumstances, the order of the Commissioner (Appeals) in not interfering with the order of the original authority is justified.

5. No valid grounds have been adduced to interfere with the order of the Commissioner (Appeals). The appeal is, therefore, rejected.

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