Commissioner of Central Excise Vs. M/S. Ambica Polytubes

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-24-2012

Judge : The Honourable Mrs. Justice Archana Wadhwa, Member (Judicial)

Appeal No. : Excise Appeal No.2263-2264 of 2009-SM , Excise Cross Objection No.243-244 of 2009 SM

Appellant : Commissioner of Central Excise

Respondent : M/S. Ambica Polytubes

Advocate for Pet/Ap. : For the Appellant: Fateh Singh, SDR. Ms. Sukriti Das, Advocate.

Judgement :

Per Archna Wadhwa, J.

1. Being aggrieved with the order passed by Commissioner (Appeals) vide which he set aside the penalty on the respondents while confirming the duty of Rs.1,04,819/-, Revenue has filed the present appeal.

2. I have heard both the sides duly represented by Shri Fateh Singh, SDR for the Revenue and Ms. Sukriti Das, Advocate for the respondents.

3. As per facts on record, the respondents factory was visited by the Central Excise officers on 21.6.07, who conducted various checks and verifications. As a

result shortage of 14245 Kgs. of PVC pipe and fittings were detected in the stock of their final product. Shri Anoop Agarwal, authorised signatory of the appellant admitted such shortages and offered to pay duty of Rs.1,04,819/-. The said duty was also debited by the respondents.

4. Thereafter proceedings were initiated by way of issuance of show cause notice dated 4.6.08 proposing confirmation of demand and for imposition of penalties. The said show cause notice culminated into an order passed by the Assistant Commissioner confirming the demand and imposing penalty of identical amount on the manufacturing unit. In addition, penalty of Rs.10,000/- was imposed on authorised signatories.

5. The respondents challenge the above order before Commissioner (Appeals) and submitted that the shortages found in the stock of finished goods was not on account of clandestine removal. However, they admitted their duty liability and also paid the same inasmuch as shortages were there. They however, challenged the imposition of penalty upon them on the ground that it is not a case of clandestine removal and they are not contesting the demand only to avoid litigation with the appellants. The adjudicating authority by relying upon the precedent decisions has held that where shortages are detected and the assessee admitted the shortages and pays the duty, the same does not lead to the fact that shortages were on account of clandestine removal, in the absence of any corroborative evidence. As such, by referring to Punjab and Haryana High Court decision in the case of M/s. Sigma Steel Tubes [2007 (218) ELT 657 (PandH), he observed that in the absence of any corroborative evidence in cases of shortage of stock of goods found in the factory, it is not clear whether the same are due to clandestine removal or on account of wrong accounting or the clerical mistake etc. Hence no penalty stands imposed. He accordingly, set aside the penalty on both the respondents. Hence, the present appeal.

6. After going through the impugned order of Commissioner (Appeals), I find favour with the observations and consequent finding arrived at by him. Admittedly the duty was sought to be raised and confirmed against the respondents only on the ground of shortages of the final product. There is

virtually no other evidence on record indicating or establishing any clandestine removal.

7. Tribunal in the case of Galaxy Textiles vs. CCE, Vapi reported as [2011 (263) ELT 604 (Tri-Ahmd)] has held that shortages of raw material although accepted by the assessee, illicit removal of final product does not stand admitted. The duty was agreed to be paid by the assessee only to avoid litigation. No further evidence to corroborate allegation of clandestine removal was available. By observing so, the Tribunal has set aside the demand and consequential penalties in that case.

Similarly in the case of CCE Kanpur vs. Rajasthan Transformers and Switchgear [2011 (264) ELT 413 (Tri-Del)], the penalty was set aside by observing that there is no evidence of clandestine removal.

In the case of CCE, Kanpur vs. Kapoor Print Pack Pvt. Ltd. reported as [2011 (264) ELT 142 (Tri-Del)], by observing that there was no admission by the authorised signatory as regards the removal of the inputs and the admission was only for shortages, imposition of penalty was not justified.8. The Revenue's only contention is that inasmuch as the respondents have not challenged the duty confirmation, penalty is required to be imposed upon them under Section 11AC. However, I find that in the light of the above referred decisions that merely because the assessee chooses not to contest the demand on account of shortages, so as to avoid litigations by itself does not mean that allegation of clandestine removal stand established against him, especially in the absence of any corroborative evidence to that effect. As such, I find no infirmity in the impugned order of Commissioner (Appeals) vide which he has set aside the penalty on the respondents.9. Accordingly, both the appeals filed by the Revenue are rejected. Cross objections also stand disposed of.