C.C.E, Lucknow Vs. M/S. Phoolchand Sales Corporation and Others

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-21-2010

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

Appeal No. : Excise Appeal No.2685 of 2007, Excise Appeal No . 3131 of 2009, Excise Appeal No. 3132 of 2009

Appellant : C.C.E, Lucknow

Respondent : M/S. Phoolchand Sales Corporation and Others

Advocate for Pet/Ap. : Shri I. Baig, SDR for the Appellants. Shri Jatin Mahajan, Advocate for the Respondent.

Judgement :

Per M. Veeraiyan:

These three appeals are by the department and arise out of same order of the Commissioner (Appeals) 85 to 87-CE/LKO/2007 dated 27.7.07.

2. Heard both sides.

3. On 30.8.04, the officers intercepted the vehicle (tempo) No. UP53 D 1251 with 40 gunny bags of Phoolchand Super Brand gutkha and driver was having invoice No. 253 dated 30.8.2004 for 10 bags of gutkha issued by M/s. Phoolchand Sales Corporation in favour of M/s. Priyadarshni Stores, Gorakhpur. The entire goods

were seized along with the vehicle. The investigation conducted revealed that M/s. Phoolchand Sales Corporation is a manufacturer of gutkha and M/s. M M Marketing is a proprietary concern of wife of Proprietor of M/s. Phoolchand Sales Corporation and that gutkha was also being sold through M/s. M.M. Marketing. The stock taking at the manufacturer’s premises revealed 3 gunny bags of gutkha in excess of the RGI stock. Later, one Shri Rama Naryan Mauraya claimed 30 bags out of seized 40 bags and produced six bills issued on 29.8.04 and 30.8.04 by M/s. M.M. Marketing in his favour. He claimed that he had purchased them from the marketing company on credit basis. On the basis off show cause notice, the original authority confiscated gutkha contained in 30 bags valued at Rs. 2,71,000/- but allowed the same to be redeemed on payment of fine of Rs.70,000/- . He demanded duty of Rs. 82,926/- from M/s. Phoolchand Sales Corporation and imposed equal amount as penalty under Rule 25(1)(b) of the Central Excise Rules 2002. He also imposed a penalty of Rs. 82,926/- on M/s. M.M. Marketing. He also ordered confiscation of the tempo but allowed the same to be redeemed on payment of fine of Rs. 12,500/- . He also imposed a penalty of Rs. 82,926/- on the owner of the vehicle. On appeal by these parties, the Commissioner (Appeals) has totally set aside the order of the original authority.

4. Learned SDR submits that M/s. Phoolchand Sales Corporation and M/s. M.M. Marketing are closely related concerns. The driver of the vehicle did not mention about any goods having been handed over by Shri Rama Narayan Mauraya. Commissioner (Appeals) has wrongly accepted the version of Shri Rama Naryan Mauraya and held that the goods are duty paid.

5. Learned Advocate for the respondent strongly supports the order of the Commissioner (Appeals). He submits that there is no evidence of clandestine removal and that the owner of the vehicle was not having knowledge of the alleged clandestine transport of the non-duty paid goods. Therefore, he seeks upholding the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides and perused the records. As per learned SDR, the Commissioner (Appeals) has not considered the following facts and evidences:-

a) The driver of the vehicle while carrying 40 bags of gutkha was having only invoices for 10 bags of gutkha and that he never mentioned anything about 30 bags having been given by Shri Rama Naryan Mauraya.

b) No evidence relating to claim of Shri Rama Naryan Mauraya for the alleged purchase of gutkha from M/s. M.M. Marketing except invoices were produced. His claim that he was transporting them in a vehicle which broke down is not substantiated as no details of vehicle which broken down is mentioned.

c) He has also not discussed the version given by the Driver representative of M/s. M.M. Marketing and the representatives of M/s. Phoolchand Sales Corporation.

d) He has also not considered the excess stock of gutkha found in the premises of the manufacturing firm which is also an indicator of clandestine removal.

7. On a perusal of the order of the Commissioner (Appeals), it is clear that the evidences have not been properly appreciated as reasons for ignoring such evidences is not forthcoming. In the absence of detailed discussion on the specific points raised by the learned SDR, I hold that the order of the Commissioner (Appeals) is not a speaking order.

8. Without expressing views on the merits of the case, I set aside the order of the Commissioner (Appeals) and remand the matter to the Commissioner (Appeals) for fresh consideration after granting reasonable opportunity of hearing to both sides.

9. Appeals are allowed by way of remand as above.