

Commissioner, Central Excise Vs. Hi-tech Pipes Ltd.

Commissioner, Central Excise Vs. Hi-tech Pipes Ltd.

SooperKanoon Citation : sooperkanoon.com/9440

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-23-1996

Reported in : (1996)(88)ELT302TriDel

Appellant : Commissioner, Central Excise

Respondent : Hi-tech Pipes Ltd.

Judgement :

1. This appeal from Revenue is against the order of the Commissioner (Appeals), Ghaziabad, dated 20-10-1995. The short facts relating to the issue of this order are as follows :- M/s. Hi-Tech Pipes Ltd. were manufacturing black steel pipes and tubes from H.R. Coils. Officers on their visit to the factory premises on 28-6-1994 detected shortages in finished goods as well as raw materials. The production of such tubes was not recorded in the RG 1 Register on 27-6-1994. After making investigations the assesseees were issued a show cause notice. After according opportunity for the assessee to be heard, the original authority confirmed demand of Rs. 51,344.45 on the shortages in the finished goods, disallowed Modvat credit of Rs. 94,110.18 on the raw materials found short in stock and imposed a penalty of Rs. 5,000/- on the assesseees. Against this order, the assesseees filed an appeal.

The Collector (Appeals) in his impugned Order set aside the orders confirming the duty demanded and for reversal of modvat credit but maintained orders of penalty. Against this order, Revenue have filed this appeal.

2. Although due notice was sent to the assesseees, they were not present nor were they represented. No request for adjournment was received from them.

3. Shri Ram Sharan, Id. JDR, argued the case for the appellants. Ld.

JDR submitted that the view taken by the Collector that there were no weighing facilities in the factory and that the figures of shortages both in finished goods as well as in raw materials were mere approximations and could not form the basis of sustaining the demand, were not based on correct appreciation of the facts. Referring to the Original Order, the Id. JDR claimed that the assesseees had been maintaining accounts of production, clearance, etc., even in the absence of weighing facility. If they could keep daily account on the basis of certain formulae which specified the weight of each variety of finished product, the Departmental Officers using the same formulae could verify whether there were shortages in stock or not. Ld. JDR claimed that the Works Manager of the assessee factory was present at the time of drawal of the Panchnama. He had signed the Panchnama and had also accepted the fact of shortages in his statement recorded on the spot. It was not available to the assesseees at the appellate stage to claim that in the absence of a weighing scale, no reliance could be placed on the figure of shortages as recorded in the Panchnama. Ld. JDR claimed that generally in steel industry weights are on the basis of approximations where the stock is worked out on average basis. This was established in the judgement of the Tribunal in the case of Nagpal Steels Pvt. Ltd. 1995 (79) E.L.T. 463 (Tribunal). Ld. JDR submitted that the Collector had erred in his findings and prayed for restoration of the Original Order.

4. I have carefully considered the submissions of the Id. JDR and have perused the relevant records.

5. It is clear from the submissions of the assesseees made both before the Original Authority and the Appellate Authority that they did not possess a weighing balance. The raw materials were coils. Their finished (sic) black pipes (sic) tubes. These goods are generally sold on the weight basis and in the absence of a weighing machine it would appear that the assessee could not conduct weighing of these. But the assessee had a system. The system has been reproduced in the

findings of the Collector. He observed that the weight of the tubes and pipes could be calculated on the basis of formulae taking into consideration the thickness, the diameter and the length of the pipe. The appellants calculated such weights when the goods were produced in their factory.

This system was obviously working to the satisfaction of both the assesseees as well as the Department. It is obvious that the total weight of the finished goods was recorded in the RG 1, otherwise the officers could not arrive even at the approximations of the shortages.

Such weight could have been written by the assesseees only on the basis of an empirical formula. The Officers in their examination adopted the same formula for ascertaining the shortages of stock over the recorded stock. The empirical formula which worked out in producing and clearing the goods on duty could also work in this case. The Original Order shows that when the examination was done, Panchnama was signed by the Works Manager. The Works Manager also in his statement recorded under Section 14 of the Central Excises & Salt Act, 1944, admitted the shortages. The lower order does not suggest that the statement was retracted later, it only records the grievances of the assesseees that the estimation sheet was not given to them. It certainly was a lapse on the part of the Lower Officer but does not vitiate the proceedings before him.

6. In the case cited by the Revenue 1995 (79) E.L.T. 463 (Tribunal) the general practice in the steel industry of taking average weight has been acknowledged and the allegation of the Department that the goods in stock were in excess by 5.8% was upheld.7. As regards the coils, they being inputs received from outside, the weight of each coil could appear on the clearance documents issued by the original manufacturer or the dealer. As such verification of the weight of the raw materials in stock would be accurate and not an approximation as in case of finished goods.

8. I find that the ratio of the judgement of the Tribunal cited by the Collector in his order is not even remotely applicable to the facts of the case.

9. A subsidiary point accepted by the Id. Collector is that weighment could not have been finished during the space of 7 hours. If physical weighment were involved then certainly this period would have been inadequate, but where the work consisted of the counting of the pipes and tubes and multiplying with the standard weight, this period was certainly sufficient.

10. On perusal of the relevant material, I am satisfied that the Original Authority had not erred in his findings. The Order-in-Appeal is set aside and the Department's Appeal is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com