

Nuchem Ltd Vs. Cce, Rohtak

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-2012

Judge : The Honourable Ms. Archana Wadhwa, Member (Judicial) & the Honourable Mr Justice Mathew John, Technical Member

Appeal No. : Excise Appeal No.222 of 2005

Appellant : Nuchem Ltd

Respondent : Cce, Rohtak

Advocate for Pet/Ap. : Present for the Appellant: L.P. Asthana, and Ms. Neha Gulati, Advocates. Present for Respondent: DR. R.K. Varma, Advocates.

Judgement :

Per Ms. Archana Wadhwa, J.

1. The present appeal stands filed against the order of the Commissioner, Rohtak vide which he has confiscated the Medium Density Fibre Boards (hereinafter referred to as MDF Boards) totally valued around Rs.32 crores on the ground that the appellant did not entered the same in their RG-1 records.The option stands given to the appellants to redeem the same on payment of redemption fine of Rs.8 crores. In addition, penalty of Rs.1.50 crores stands imposed upon the appellant in terms of Rule 173Q of the erstwhile Central Excise Rules, 1944.

2. As per facts on record, the appellants are engaged in the manufacture of MDF boards falling under Chapter 44 of Central Excise Tariff Act, 1985. Their factory was visited by the officers of DGCEI on 27.03.11 and 16,708.106 MT MDF boards totally valued Rs.32,35,61,914/- were found to be lying in the open outside the store room. The statement of Shri P.R.Biswar, Deputy Manager (Excise) was recorded wherein he deposed that the goods found in the open were still in the charge of production department in as much as the same were not finished goods. It is only after being handed over by the quality control department, the same would be taken into stock register.

3. Statement of Shri S.K.Agrawal, Senior Manager (Production) was also recorded 27.03.01 wherein he deposed that the goods in question were produced 3-4 years back when they were exporting the same and in anticipation of export orders, such a huge quantity was produced. However, due to sudden change in the circumstance, the said goods could not be exported and got accumulated. He also clarified that the goods in question were yet to be handed over to the quality control department (by the production department) for finishing and grading. He further deposed that as and when they get orders for the said goods, the same are taken up for finishing, i.e., re-sanded to remove the spots, marks etc. and issued to the quality control department for testing. After clearing the quality test, the same are dispatched to their concerned section and after recording in their RG-1 register, the same are cleared on payment of duty.

4. The factory premises were again visited by the officers on 20.04.01 and various records were resumed under Panchnama. Statement of Shri Mukesh Bhargava, G.M.(Operations) was recorded deposing that huge stock of goods was accumulated on account of sudden stoppage of export due to cancellation of export orders. The said goods reflect in their balance sheet since 1993, as goods in process. He also clarified that the said goods were yet to be handed over to the quality control department which conducts certain tests on the said goods for physical and strength properties. He explained that the said goods in process cannot be entered in RG-1 register as they had to reduce the size and finish the same as per the demand of the market.

5. The officers examined the said goods visually and found that there was no apparent difference in the physical properties including finished and smoothness of its surface. According to officers, the goods were properly sanded and cut into standard sizes. In as much as the same were not entered in RG-1 register, the officers detained the same under detention memo dtd. 20.04.01.

6. Thereafter the records recovered from the appellant's factory were scrutinized by the officers and it was found that the sanding of the MDF boards and cutting the same into requisite sizes was being done at the production stage itself and not after producing them and sending same to quality control measures. The quality control was only to determine whether the finished goods could be sold as 'A' grade or 'B' grade and not for the purpose of deciding whether the same were finished or semi-finished goods. Appellants were reflecting the finished goods as also work in process to their bankers with rate and value. The detained goods were subsequently converted to seizure vide seizure memo dtd. 13.08.01.

7. On the above facts, SCN dtd. 24.09.2002 was issued proposing confiscation of goods and imposition of penalties. The said SCN culminated into impugned order.8. The only issue required to be decided in the present appeal is as to whether the goods in question were fully finished final products requiring their entry in RG-1 register or the same were in semi-finished condition as contended by the appellant. It is seen that the initial statement of the responsible officers of the company are to the effect that the goods in question have not attained finality in as much as sanding is required to be done for removal of spots etc. and the same are required to be cut in sizes. Quality test is also required to be conducted on the same by the quality control department of the appellant. The officers have also stated that the goods were the production of the last 3-4 years, when they were exporting the same and have got accumulated on account of cancellation of export orders. However, the Commissioner has not accepted the above stand of the appellant on the ground that as per the visual examination of the goods by the officers, they appeared to be properly sanded and in finished condition.

9. We find that Revenue has nowhere contended that the goods were of recent manufacture. The appellant's stand that they were manufactured for last 3-4 years

stands accepted. If that be so, we really fail to understand as to how the allegations of clandestine removal without making their entry in RG-1 register can sustain. If there was any intention on the part of the appellant to remove the goods without payment of duty, they could have done so during the long intervening period of 3-4 years.

10. We also note as recorded in the preceding paras that the statements of all the persons recorded on-the-spot, pointed out to only one fact that the goods were yet to pass quality control test and inspection and have not reached the final stage so as to make their entry in RG-1 register. The visual examination by the officers who are not technical experts in MDF boards, cannot be made the basis for arriving at a different finding. It has very clearly come-up on records in the shape of deposition of various persons that the boards in question were still in semi-finished condition and were not ripe for making their entry in RG-1 register.

11. In view of the above facts and circumstances, we are of the opinion that confiscation of the same is neither justified nor warranted. We accordingly set aside the impugned order of Commissioner for confiscating the MDF boards and imposing penalty upon the appellants. The appeal is allowed with consequential relief.

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