Rollsprint (Packaging) Ltd. Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/9535

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-21-1996

Reported in : (1996)(88)ELT489Tri(Mum.)bai

Appellant : Rollsprint (Packaging) Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. This appeal is against the order-in-original dated 30-1-1992 passed by the Addl. Collector of Customs & Central Excise, Baroda. The Appellants, viz., M/s. Rollsprint (Packaging) Ltd. vide their application dated 15-5-1996 prayed for change in the title of their appeal from M/s. Rollosprint (Packaging) Ltd. to M/s. Contemporary Packaging Pvt. Ltd., on account of the transfer of rights and liabilities of the former to the latter.

2. The short facts leading to the issue of the impugned order are as follows.

3. On a visit to the factory of the appellants, the Excise officers found excess stock of dutiable goods valued at Rs. 2,63,157/-.

Examination of the Modvat accounting showed that credit amounting to Rs. 3,22,823 /- was taken on gate passes which was neither in the name of the appellants nor were endorsed to them. After giving the appellants a hearing, the Addl. Collector ordered reversal of the Modvat credit wrongly taken. He also directed them to pay an equivalent amount as duty. He confiscated the goods not recorded in the RG 1 register but ordered their redemption on payment of a fine of Rs. 50,000/-. He imposed a penalty of Rs. 25,000/- on the assessees. He also confiscated the land, building, etc., in terms of Rule 173Q(2) (a) of the Central Excise Rules, 1944 and permitted their redemption on payment of a fine of Rs. 25,000/-.

4. Before us the case of the appellants was argued by Shri Willingdon Christian, Advocate and for the revenue by Shri S.V. Singh, J.D.R.5. Shri Willingdon Christian fairly conceded that the Modvat credit taken on gate passes which were not in the appellants name and which were not endorsed to them was not admissible. He, however, submitted that there was no cause for the original authority to confirm the demand of an identical amount. He pleaded that the quantum of fine and penalties prescribed was too high. Citing the judgments of the Tribunal, he claimed that mere non-accounting of the goods in the statutory register will not give rise to the presumption that the goods were meant for clandestine removal. On this ground he urged that invocation of Rule 173Q for imposition of penalty was wrong and that the case could be covered under Rule 226 of the Rules. As regards order of confiscation of land, building, etc., the ld. advocate claimed that this was an extreme measure to be adopted in case of habitual offenders only. Citing the judgment reported in 1984 (17) E.L.T. 402 he submitted that this was not the case on hand.

6. Shri S.V. Singh, ld. JDR reiterating the plea in the lower order claimed that the facts in the present case were capable of being distinguished from the facts in the cited case.

7. We have carefully considered the arguments advanced by both the sides and have perused the relevant documents.

8. The Addl. Collector has ordered reversal of the Modvat credit amounting to Rs. 3,22,823 /- taken on account of wrong documentation.

This part of the order has not been contested and therefore, sustains.

9. The demand for equivalent duty as per the Show Cause Notice is made on the observation that in clearing some goods, Modvat credit was utilised which credit was not available. This defect having been set right by reversal of Modvat there was no case for confirming a demand for this amount. The Addl. Collector had in his findings not even discussed the grounds on which this demand was confirmed. This portion of his order does not sustain and has to be set aside.

10. As regards the submission that the provisions of Sections 173Q(1)1 are not attracted in the case of failure to maintain correct accounts, we observe that the Addl. Collector has not specified in his order that the penalty was on account of this contravention alone. The reading of this order would suggest that for all the 3 contraventions ennumerated therein he has imposed a combined penalty. The quantum thereof cannot be called to be excessive and therefore, there is no reason to interfere with this portion of the order also. The quantum of fine, given the value of the contraband goods cannot also be called to be excessive and does not warrant interference with. As regards the order of confiscation of land, building, etc., we agree with the submission of the ld. advocate that this is an extraordinary provision which should be invoked only in the case of habitual offenders. This not being the case here, we set aside the order of confisction of land, building, etc., and order remission of the redemption fine of Rs. 25,000/-.