

Customs, Excise and Gold Tribunal - Delhi

Commissioner Of Central Excise vs Parabolic Drugs Ltd. on 8 December, 2003

Equivalent citations: 2004 (168) ELT 135 Tri Del

Bench: M T K.D.

ORDER K.D. Mankar, Member (T)

1. Heard both sides.

2. The Revenue's appeal is directed against the findings arrived at by the Id. Commissioner (Appeals) in the impugned order. The Commissioner in his impugned order has dealt with the department's appeal against the order-in-original as well as the appeal of the respondent.

3. So far as the respondent's appeal relating to demand of duty on the shortage of raw material is concerned, it has been noted that, the demand has been confirmed by the adjudicating authority on the ground that either the raw material itself has been removed clandestinely or the said raw material was not brought to the factory and credit taken without any documentary basis. The Commissioner (Appeals) considered this finding of the adjudicating authority to be totally vague and without any basis and noted that, adjudicating authority himself is not sure about the irregularity or offence committed by the appellant (respondent). Against this finding of the Commissioner (Appeals), the Revenue's appeal has not specifically given any contrary facts or findings to assail the said findings. Therefore, the Revenue appeal against this finding is without any substance and is rejected and the findings of the Commissioner (Appeals) therein are confirmed.

4. The Commissioner (Appeals) has rejected the departmental appeal against the findings of the adjudicating authority. The Revenue is challenging that. In the order-in-original, the Joint Commissioner has accepted the plea of the respondents that the Invoice No. 409 indicating the removal date of 11-9-99 is actually the invoice dated 17-9-99, and mention of 11-9-99 instead of 17-9-99 is purely a clerical error. The Id. Commissioner (Appeals) held that, the allegation of clandestine removal are not sustainable in the light of the analysis made by the adjudicating authority. In the Revenue's appeal before the Tribunal, no effort was made to demolish this finding and it is only pleaded that, non-accountal of goods in the RG-1 must lead to confiscation and imposition of penalty.

5. It must be kept in mind that the term "non-accountal" cannot be equated with the term "failure to make an entry in one of the registers", in those cases, where entries showing that production having been subjected to licit removal on duty payment e.g. in PLA or invoices, figure. In other words mere failure to make entry in one of the documents namely, in RG-1 register, does not mean that, there has been non-accountal in the whole series of record that would be maintained by the assessee, so as, not to leave any trace anywhere of the concealed production, once the goods leave the factory premises.

6. So I agree with the finding of the Commissioner (Appeals) that, once the invoice is issued, the party could not escape the duty assessed on such invoices. In the instant case Invoice No. 409, though wrongly mentioned the date as 11-9-99, as analysed by the Commissioner, the same is for

removal dated 17-9-99. This is a case of failure to make an entry in one record namely RG-1 and not a case so as to warrant imposition of penalty under Rule 173Q for non-accountal. The Commissioner observed that, there was a failure to make proper accountal (meaning that there was improper accountal) and accordingly penalty was imposed under Rule 226. In the Revenue's appeal no evidence has been brought on record to show that there was an attempt to clear manufactured finished goods in a clandestine manner, without payment of duty so as to impose penalty under other Sub-rules of Rule 173Q. Therefore, the findings of the Commissioner (Appeals) on this point also do not deserve to be disturbed.

7. Accordingly, the Revenue's appeal is rejected as being devoid of merits.