
(2010) 03 P&H CK 0102
In the Punjab And Haryana At Chandigarh

Commissioner of central Excise	Vs	APPELLANT
Mico Glass Industries Pvt. Ltd.		RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC

Citation : (2010) 177 ECR 319

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Judgement

Ashutosh Mohunta, J.—The Revenue has impugned the order (Annexure A-4) dated 18.2.2008, passed by the Customs, Excise & Service Tax Appellate Tribunal (for short "the Tribunal") vide which the appeal filed by the respondent was partly accepted and it was held that there was no material to suggest that there was any clandestine removal of the case and hence no penalty was imposed upon the respondent.

2. M/s Mico Glass Industries Pvt. Ltd., Gurgaon is engaged in the manufacture of Safety/toughened and edged worked glass, both tinted as well as non-tinted, for automobiles and architectural purpose falling under Chapter 7003.00 and 7004.00 of the Central Excise Tariff Act, 1985. they have been availing modvat credit of duty paid on inputs under Rule 57-A of the Central Excise Rules, 1944 (for short "the Rules").

3. On 15.7.1998, the officers of Central Excise (Preventive), Division-II, Gurgaon visited the premises of the factory and in the follow- up action and interception of a tempo in transit it was found that the tempo was carrying finished goods of the respondents. On physical verification of the stock, there was shortage of raw material and shortage as well as excess quantities of different types of finished goods were found which involved a total duty of Rs. 2,41,460/-.

4. On the basis of the aforementioned shortages, a show cause notice was issued which was confirmed by the adjudicating authority vide order Annexure A-1. The

appeal filed by the respondent was dismissed by the Commissioner (Appeals). However, in appeal filed before the Tribunal, the orders passed by the adjudicating authority and the Commissioner have been partly set aside and it has been held that there has been no material on the basis of which it could have transpired that there was any clandestine removal of the goods and the penalty imposed was set aside.

5. Mr. Kamal Sehgal, counsel for the appellant has contended that the fact that clandestine removal of the goods stands fully established as a tempo carrying finished goods manufactured by the respondent was intercepted on the basis of inspection of the finished goods being carried in a tempo, stock of the respondent-company was verified and it was found that there was shortage of raw material and shortage as well as excess quantities of different types of glasses. He, however, submits that findings recorded by the adjudicating authority and the Commissioner (Appeals) are liable to be upheld as the respondent had habitually been removing finished goods without payment of duty. Learned Counsel has submitted that while imposing the penalty upon the respondent, the period from 1.7.1998 to 15.7.1998, was taken into consideration and penalty was imposed on the entire goods.

6. Counsel for the respondent on the other hand submits that the goods manufactured from 1.7.1998 to 15.7.1998, had not been removed out of the factory premises, although they had not been entered in the Register. Learned Counsel further submits that the shortage, which was detected, was on account of wastage and non-recording of certain invoices in the Register, however, as the goods had not been removed out of the factory premises, hence, no inference can be drawn that the same was ready for clandestine removal.

7. On the basis of the aforementioned facts, the following question of law arises in the present appeal:

8. Whether the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, is justified in setting aside the penalty imposed by the Adjudicating Authority u/s 11AC of Central Excise Act, 1944?

9. A perusal of the aforementioned facts clearly shows that a tempo carrying the finished product manufactured by the respondent was intercepted and it was found that non duty had been paid on the goods being carried in the tempo. It is thus, clear that the respondent was trying to remove the goods in the tempo clandestinely. We are of the considered opinion that penalty can only be imposed on the goods which were removed from the premises and intercepted in the tempo. Thus, the respondent is liable to pay penalty on the goods which were removed in the tempo from the factory premises and the same were intercepted.

10. However, the goods which were not removed from the factory premises and were still lying, although some of the invoices had not been entered in the Register, no penalty would be leviable as no clandestine removal had taken place. The contention of the counsel for the Revenue that there was, however,

likelihood that goods would have been removed clandestinely cannot be accepted as a finding to this effect would be based on conjectures and surmises and would be absolutely speculative in nature. Thus, no penalty is leviable on the goods which had not been removed from the factory premises.

11. In view of the above, we held that penalty would be levied only on those goods which had been removed clandestinely out of the factory premises of the manufacturer and no penalty would be leviable on the shortage found on stock verification and on the goods which had not yet been removed out of the factory premises of the manufacturer.

12. Since the penalty would have to be recalculated, therefore, we set aside the impugned orders passed by the adjudicating authority, Commissioner(Appeals) and the Tribunal to the extent indicated above and remand the case back to the adjudicating authority for calculating the penalty to be imposed upon the respondent in the light of our observations made above.