(2013) 01 DEL CK 0084

In the Delhi High Court

Case No : CEAC 5 of 2013

Commissioner of Central Excise Delhi-I — APPELLANT

Vs

Balaji Trading Co. and Others — RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 2 AD 112 : (2013) 290 ELT 200 : (2013) 18 GSTR 406

Hon'ble Judges : R.V. Easwar, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Kamal Nijhawan with Mr. Sunit Gaur and Mr. Dinesh Patel, for the Appellant;

Judgement

Badar Durrez Ahmed, J.—This is an appeal u/s 35G of the Central Excise Act, 1944. It has been filed by the revenue, being aggrieved by the final order No. A/655-657/2012-EX (BR) dated 05.062012 passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) in Central Excise Appeal Nos. 260/2012, 292/2012 and 342/2012, whereby the said appeals filed by the respondent were allowed. The Commissioner (Adjudication) had passed an order on 31.10.2011, whereby he had imposed penalties of Rs. . 10 lacs on Balaji Trading Company, Rs. . 3 lacs on Pooja Agencies and Rs. . 10,000/- on Balaji Flexipacks, respectively, under Rule 25 of the Central Excise Rules, 2002.

2. The allegation against the respondents was that they were storing and selling zarda which had the brand name of "Ratna" and which had been manufactured by Prabhat Zarda Factory. It is alleged that the said Prabhat Zarda had clandestinely cleared the said quantities of ''Ratna'' Zarda and that the same were being stored with the respondents for further sales. It is also contended that the said respondents were related concerns of Prabhat Zarda Factory.

3. The Commissioner passed an order-in-original dated 31.10.2011, whereby the said penalties were imposed on the respondents under Rule 25 of the said Rules. Rule 25 of the said Rules reads as under:-

RULE 25. Confiscation and Penalty -- (1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required u/s 6 of the Act; or

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [rupees two thousand], whichever is greater.

(2) xxxx xxxx xxxx xxxx.

4. The Tribunal, however, allowed the appeals of the respondents by holding that Rule 25 does not apply to the respondents as it was not the case of the prosecution that the respondents were producers, manufacturers, registered persons of a warehouse or registered dealers. It is pertinent to note that Rule 25(1) specifically mentions four categories of persons:- (a) producer; (b) manufacturer; (c) registered person of a warehouse; or (d) a registered dealer. These four categories of persons are also mentioned at the end of Rule 25, where the liability of penalty has been spelt out. It is, therefore, clear that the penalty can be imposed on such persons only. The respondents are neither producers nor manufacturers of the said Prabhat Zarda nor are they the registered persons of a warehouse in which the said zarda had been stored. The respondents are also not the registered dealers. That being the case, no penalty can be imposed on the said respondents. The Tribunal has come to the correct conclusion, particularly, as it was not the case of the prosecution that the respondents fell within any one of the four categories of persons mentioned above.

5. The learned counsel for the appellant contended that Rule 25(1)(c) would be applicable. However, we do not agree with this contention because sub-clause (c) would apply only in respect of the four categories of persons mentioned in the earlier part of Rule 25(1) of the said Rules. That is clearly not the case. Therefore, Rule 25(1)(c) would have no application in the present case. As such, no substantial question of law arises for our consideration. The appeal is dismissed.