(2016) 02 KL CK 0132

In the High Court Of Kerala

Case No : C.E. Appeal No. 5 of 2005

ITEL Industries Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise, Calicut RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Citation : (2016) 336 ELT 299

Hon'ble Judges : Thottathil B. Radhakrishnan and Anu Sivaraman, JJ.

Bench : Division Bench

Advocate : K.B. Muhamed Kutty Senior Advocate and Shri K.M. Firoz, Advocate, for the Appellant; John Varghese, Assistant SG and Thomas Mathew Nellimoottil, SC, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—We have heard the learned senior counsel for the appellant and the learned senior standing counsel for the Central Board of Excise and Customs.

2. Appellant was issued notice to show cause against the proposal for imposing demand of duty in relation to goods referred to in Annexure-B show cause notice and also for imposition of penalty. Identity of respective records and duty involved were enumerated in that show cause notice. The ground for the proposed action was footed on the reason that the assessee has violated the provisions of Rules 13 and 14 of the Central Excise Rules, 1944 inasmuch as it has failed to produce the proof of export within six months from the date of exportation. In answer thereto, the assessee placed its reply contending, among other things, that the whole situation was relatable to mismanagement of its establishment, particularly the planning department, excise section and the shop floor in completing the production process. The assessee stated that the shop floor was required by the planning department to complete the production process in view of the impending proposal to export telephone equipments to Sri Lanka. Further contention was that to the great surprise of the assessee, it came

to know later that the shop floor had assembled open market phones instead of export phones and that it was an error in executing the production plan, however that, this was not communicated to all concerned and, therefore, timely corrective action was not taken. The sum and substance of the plea is that though all excise formalities for exporting bond of the goods were carried out by the appropriate authorities, the production of proof of export in terms of Rules 13, 14 and 14A of the Central Excise Rules was not complied with. The adjudicating authority has, therefore, held that having failed to submit such proof of export in terms of Rule 14A, the appellant was liable for the duty in addition to the penalty. The mere statement that Sri Lankan Telecom did not confirm the export order was insufficient for the adjudicating authority and the first appellate authority to come to the aid of the assessee though the assessee had consistently contended that it could not be called upon to prove the negatives on the basis of its records when its contention was that what it produced was only locally marketable commodity and there was nothing to show that there was actual utilisation of the excise formalities leading to the proposed export of telephones to Sri Lanka. In further appeal, the CESTAT adverted to and considered the entire facts and materials and could not find their way to disagree with the conclusions of the first appellate authority or the adjudicating authority.

3. Though the learned senior counsel appearing for the assessee made very persuasive submissions on the basis of the question of burden of proof and the impropriety in calling upon the assessee to prove the negatives regarding the export that was covered by the documents, we see that a different conclusion could not have been arrived at by the authorities below on the basis of the materials on record. The version of the assessee was one which fundamentally stared at its non-managerial process. That by itself was insufficient to discharge the burden to show the reason for non-utilisation of documents relating to excise formalities, particularly when much before the show cause notice, there was no action taken by the assessee to inform the concerned authorities regarding non-availing and non-utilisation of the result of the formalities carried forward in anticipation of the export. The adjudicating authority, the first appellate authority and the CESTAT having concluded as afore noted on the basis of the materials on record, we do not find any substantial question of law or any other material on the basis of which we could, through an appeal under Section 35G of the Central Excise Act, interfere at the instance of the assessee. This appeal, therefore, fails.

4. In the result, this appeal is dismissed.

