(2015) 12 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 2126, 2245, 2246, 2247 Of 2006

M/s. Refractores And Ferro Alloys And Ors. APPELLANT

Vs

Commissioner Of Central Excise And Customs-Raipur RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:

Central Excise Rules, 1994 — Rule 9, 49(1A), 209A
Central Excise Act, 1994 — Section 11A, 11AC

Citation : (2015) 12 CESTAT CK 0016

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Jitender Singh, G.R. Singh

Final Decision : Allowed

Judgement

1. These appeals are directed against the impugned order dated 31/3/2006 passed by the Commissioner Central Excise and Customs, Raipur whereby

penalty of Rs.2 lakh each on the appellants have been imposed under Rule 209A of the Central Excise Rules, 1994.

2. The brief facts of the case are that the appellants, herein are the traders dealing with the excisable goods. Proceedings were initiated by the Central

Excise Department against the manufacturer M/s. Standard Ispat Limited and M/s. Standard Ferro Alloys Pvt. Ltd. on the ground that the said firm

created fictitious firms for ______the excisable goods without payment of Central Excise Duty. Show cause notice was issued in relation to various

notices were adjudicated vide the impugned order whereby duty demand of Rs.70,22,749/- was confirmed on M/s. Standard Ispat Limited with equal

amount of penalty. Besides, penalty of Rs.2 laksh each on the appellants herein were also imposed under Rule 209A of the Central Excise Rule, 1944.

3. Ld. Advocate, Shri Jitender Singh, appearing for the appellants submits that neither in the show cause notice nor in the adjudication order, there is

any mention about this confiscation of goods. It is his submission that since the goods are not being confiscated, imposition of penalty under Rule 209A

is not applicable.

4. On the other hand, Ld. DR, Shri G.R. Singh appearing for the respondent reiterates the findings recorded in the impugned order.

5. I have heard both the sides.

6. I find that in the show cause notice dated 7/11/2001, there are only proposal for confirmation of the duty demand under Rule 49(1A) read with

section 11A of Central Excise Act, 1944 along with interest and imposition of penalty under Rule 9 (2; 52-A, 173Q, 209 and 226) of Central Excise

Rules, 1944 and also ________ to the penalty in terms of section 11AC of the Central Excise Act. There is no specific mention or any proposal

regarding confiscation of the excisable goods. Further, I also find that in the adjudication order, there is also no specific findings will be recorded that

the goods liable for confiscation or the option has been given for ____the confiscation goods on payment of redemption fine. Since goods are not

being confiscated under Rule 209A of the Central Excise Rule, 1944 penalty on the appellants in this case cannot be imposed under Rule 209A, since

the said Rule can only be invoked when the goods are liable to confiscation under the Act or the Rules.

7. In view of the above, I am of the considered opinion that section 209A has no obligation in the facts and circumstances of the present case and

thus, the penalty imposed on the appellants are liable to be set aside. Therefore, the impugned orders are set aside and the appeals are allowed in

favour of the appellants.

