(2010) 01 P&H CK 0227

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of C. Ex.		APPELLANT
	Vs	
Nikhil Footwears		RESPONDENT

Date of Decision: Jan. 28, 2010

Acts Referred:

- CENVAT (Credit) Act - Section 11AC
- CENVAT (Credit) Rules, 2002 - Rule 13, 25, 4

Citation: (2010) 254 ELT 623

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ashutosh Mohunta, J.

The Revenue has filed this appeal impugning the order (Annexure P-3) dated 14-11-2007 [2008 (224) E.L.T. 73(Tri.-Del.)], passed by the Customs, Excise and Service Tax Tribunal, New Delhi (for short "the Tribunal") vide which the penalty imposed upon the respondents was set aside and it was held that there was no clandestine removal of any input which was being used by the respondents in manufacturing of their product.

2. The respondents are engaged in manufacture of footwear, P.U. Sole etc. which are classifiable under CETH 6401.02 of the Central Excise Tariff Act, 1985. On 18-2-2003, the Central Excise Officers visited the factory premises of the respondents and verified the stocks of inputs. It was found that there was shortage of inputs, namely, cyclohaxamine and PVC compound. Accordingly, a show cause notice was served upon the respondents to which they replied. The Assistant Commissioner, Central Excise vide his order dated 24-3-2004, confirmed the

demand of Central Excise amounting to Rs. 2,39,713/- and also imposed penalty equivalent to the amount of duty. The respondents had duly paid the duty even before issuance of show cause notice and had admitted their liability to pay the duty, but challenged the penalty imposed on them before the Commissioner, Central Excise. The Commissioner vide his order (Annexure P-2) dated 30-9-2005, maintained the penalty as imposed by the Assistant Commissioner, however, he also imposed a penalty of Rs. 30,000/- for violation of Rule 13 of the Cenvat Credit Rules, 2002.

3. The respondents challenged the aforementioned order before the Tribunal, who vide the impugned order (Annexure P-3) set aside the penalty and held that there was no intention on part of the respondents to clandestinely remove the inputs of cyclohaxamine and PVC compound.

4. Counsel for the appellant has submitted that as per physical verification conducted by the officials of the Excise Department, there was a shortfall in the inputs of cyclohaxamine and PVC compound. The respondents have explained the shortage by submitting that as far as cyclohaxamine is concerned, the same has evaporation tendency and due to evaporation process, a reasonable loss of 5.93% of this material occurred. He further submits that as far as PVC compound is concerned, there was negligible shortfall in the inputs of 0.18% only and hence it cannot be said that there was any intention on part of the respondents to evade the payment of duty on the aforementioned inputs.

5. This Court while admitting the appeal had framed the following question of law:

Whether the Custom, Excise and Service Tax Appellate Tribunal, New Delhi is correct in law for setting aside the imposition of penalty equivalent to the amount of duty imposed under Rule 25 of the Cenvat Credit Rules, 2002 read with Section 11AC?

6. A perusal of the impugned order passed by the Tribunal shows that clearance of duty paid inputs under Rule 4 was on record and therefore, there was no intention on part of the respondents to evade payment of duty and hence there was no reason to impose penalty. This Court in Commissioner of Central Excise, Ludhiana v. FAS Kusum Ispat (P.) Ltd. reported as 2009 (240) E.L.T. 13 (P & H) has held that in a case where there is a shortage of inputs, however, there is no mens rea or intention to evade duty and further no clandestine removal of inputs, then there is no question of imposition of any penalty. In the present case, we find that one of the inputs being used by the respondents, i.e. cyclohaxamine was subject to evaporation process and hence there could have been a shortfall of this input on account of evaporation and therefore, the respondents cannot be held liable for any imposition of penalty, specially, when they have already paid the duty even prior to the issuance of show cause notice. As far as shortage of PVC compound is concerned, we find that there is a marginal shortfall of 0.18%, which is too negligible to term it as an intention on part of the respondents to evade duty. Hence, we hold

that CESTAT has correctly set aside the penalty equivalent to the amount of duty imposed under Rule 25 of the Cenvat Credit Rules, 2002 read with Section 11AC.

7. Resultantly, we are of the considered opinion that there was no clandestine removal of the inputs. Accordingly, we find no infirmity in the order passed by the Tribunal and the appeal filed by the Revenue is dismissed.