

Mere difference in figures in Balance sheet and ER-1 return is not sustainable cause to impose duty

The CESTAT, Kolkata in *M/s. Pratap Polysacks Ltd. v. Commissioner of Central Excise, Haldia [Excise Appeal No.175 of 2011 dated August 07, 2023]* set aside the demand order passed by the Adjudicating Authority and held that duty cannot be demanded merely based on the difference in sales figures between the balance sheet and the and ER-1 Returns, there has to be some positive evidence brought on record to substantiate the allegation of clandestine clearance.

Facts:

M/s. Pratap Polysacks (**"the Appellant"**) is engaged in the manufacture of HEPE/PP Sacks, Woven Fabric, woven sacks liner and cut pieces.

The Revenue Department (**"the Respondent"**) conducted physical verification of stock at the business premises of the Appellant on June 04, 2008 and found 2375 kgs of Master Batch in excess over and above the stock reflected in their RG-23A part-I account.

A statement of the representative of the Appellant was recorded, who accepted the difference, but could not able to justify the reasons for such difference and stated that the difference might have occurred due to excess quantity shown as consumption reported by the Supervisor over a long period of time and it might have been purchased for job work of M/s. Hissar Udyog Pvt. Ltd. for which no Cenvat credit was taken.

Subsequently on June 12, 2008 the Anti evasion unit of the Respondent again visited the Appellant's business premises and undertook fresh stock counting, wherein 2260 kgs of Master Batch was found excess over of Master Batch and the same was seized. However, the Respondent released the Master Batch provisionally vide order dated November 11, 2008.

The Respondent further investigated the Appellant books of accounts for the financial year 2004-05, 2005-06, 2006-07 and 2007-08 and found that the sales figures in terms of quantities declared in the Schedule of Balance Sheets were not tallying with the quantity of clearance of those products declared in the monthly ER-1 returns filed by the Appellant during the corresponding financial years.

Thereafter, a Show Cause Notice dated May 26, 2009 ("**the SCN**") was issued to the Appellant demanding Central Excise duty amounting to INR 50,52,308 under Section 11A(1) of the Central Excise Act, 1944. Later the Adjudicating Authority vide order December 06, 2010 ("**the Impugned Order**") reduced the demand and confiscated the seized Master Batch but allowed the same on payment of redemption fine of INR 15,000 as penalty.

Aggrieved by the Impugned Order the Appellant filed three appeals before the CESTAT, Kolkata.

The Appellant submitted that the alleged differences between the figures appearing in the monthly ER-1 register and reflected in the Schedules to the Balance Sheet for the financial years 2005-06 2006-07 and 2007-08, were certified by the Chartered Accountants after examination of their books of accounts for those financial years.

The Appellant also submitted that so far as the excess of stock of 2260 kgs. of Master Batch found on physical verification of stock of raw materials on June 12, 2008 is concerned, they have not taken Cenvat credit on the excess quantity of Master Batch found. However, since no Cenvat credit was taken on such excess quantity of Master Batch, confiscation of the same does not arise.

Issue:

Whether the duty can be demanded solely based on differences between sales figures in the balance sheet and the ER-1 returns?

Held:

The CESTAT, Kolkata in **Excise Appeal No.175 of 2011** held as under:

- Observed that, the demand in the Impugned Order is mainly due to the difference between the sale figures available in the Schedule of the Balance Sheet for financial year 2004-05, 2005-06, 2006-07 and 2007-08 and the quantity of clearance of those products declared in the monthly ER-1 returns filed by the Appellant during the corresponding financial years.
- Noted that, the demand was confirmed based on the difference between the sales figures available in the Balance Sheet and the value declared in the ER-1 returns.
- Opined that, mere allegation of shortage based on the difference in sales figures between the balance sheet and the and ER-1 Returns, cannot be the basis for confirming the central excise duty on the differential quantity.
- Held that, Central Excise duty cannot be demanded merely based on the difference in sales figures found between the balance sheet and the and ER-1 Returns, there must be some positive evidence brought on record to substantiate the allegation of clandestine clearance.
- Set aside the demand confirmed in the Impugned Order.

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