

2014 (3) ECS (121) (Tri - Del.)

In The Customs, Excise & Service Tax Appellate Tribunal
West Block No. 2, R.K. Puram, New Delhi-110066

M/S. ATUL ENTERPRISES

Vs.

C.C.E., DELHI - IV

Date of Hearing: 09.04.2014

Date of Decision: 09.04.2014

Appeal No. E/3812/2010-EX[SM]

[Arising out of Order-in-Appeal No.185-188/CCE/ APPL/DLH-IV/2010,dated 08.10.2010 passed by C.C.E.(Appeals), Delhi-IV]

Appearance:

Shri NK Sharma, Advocate

For the Appellant

Shri Govind Dixit, DR

Shri Sanjay Jain, DR

For the Respondent

CORAM:

Hon'ble Mr.D.N.Panda, Judicial Member

Final Order No.51745/2014

“Second Stage Dealer successively passed on the paper credits to the buyers thereof without any goods covered by such invoice delivered. When the dealer appellant did not get the goods at all from the first stage dealer, there was commitment of fraud against Revenue.”(Para 4)

Per: D.N.Panda:

Ld. Counsel for the appellant submits that the appellant is a second stage dealer. It has been brought to the fold of the penalty on the allegation that without supplying the goods, only invoices were issued by the appellant. Accordingly, penalty of Rs.8,68,110/- has been imposed on the appellant under Rule 25 of Central Excise Rules, 2002. It was further submitted that the appellant was not manufacturer. The manufacturer, who was involved in this case viz., M/s. SDL Auto Pvt. Ltd., Faridabad has already discharged the duty component of Rs.11,11,702/- with interest and penalty to the extent of 25% of the duty has also been discharged. Therefore, in all probability, calling for penalty of 25% of duty from the dealer shall serve the interests of justice.

2. Revenue, on the other hand, stated that the appellant committed fraud

successfully to fulfill the mission of the fraudulent manufacturer. When investigations unearthed the fraud, entire collusion of all the connected parties came to record. That was considered while directing pre-deposit of 50% of the penalty imposed. No cogent evidence is led by the appellant to overcome the rigour of the penalty.

3. Heard both the sides.
4. Facts on record exhibit a clear case of collusion of the second stage dealer appellant, who successively passed on the paper credits to the buyers thereof without any goods covered by such invoice delivered. When the dealer appellant did not get the goods at all from the first stage dealer, there was commitment of fraud against Revenue issuing paper credit to defraud the exchequer to the extent of CENVAT credit of Rs.8,51,090/- involved in the present case. This being the part of the entire credit passed on out of the goods involving duty of Rs.11,11,702/-, It would be proper to impose penalty of Rs.5 lakh on the appellant which shall be in consonance with the mandate of the law. The order of the authority below is modified accordingly reducing penalty to the amount of Rs.5.00 lakhs.
5. Revenue at this stage mentioned that the Appeal No.E/81/2011 relating to the case of M/s. Nidhi Enterprise is similar to the present case of mere issuance of paper credit without delivery of goods at the cost of Revenue. But Id. Counsel mentions that he is not engaged in this appeal. Therefore, for future reference of the Bench a copy of this order be kept by the Registrar in the appeal record of M/s. Nidhi Enterprise.

(D.N. Panda)
Judicial Member