T Vs. Suzuki Ltd.

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SooperKanoon Citation : sooperkanoon.com/10392

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Nov-20-1996

Reported in : (1997)(92)ELT386Tri(Chennai)

Appellant : T

Respondent : Suzuki Ltd.

Judgement :

1. The issue in the appeal relates to levy of penalty on the appellants for the reason that they had taken Modvat credit wrongly in respect of certain inputs. The amount involved is Rs. 4,70,007.43.

2. The learned Counsel has sought for an adjournment. Since the issue lies in a short compass and the appellants have admitted having made double entries in respect of the Modvat credit and the issue to be decided therefore is in regard to levy of penalty, we decline the request for adjournment and proceed to decide the appeal.

3. The plea of the appellants is that a mistake occurred due to the system failure of the computers and also on account of clerical mistakes made by the staff. It has been urged that the appellants had evolved a system where in case there has been a double entry of Modvat credit it would get detected from the computers and a similar detection had earlier also been made and that there appears to have been some failure both in the system as well as on the part of the clerical staff. The plea taken before us at the time when the stay petition was taken up was that

the appellants were paying a duty of Rs. 8 crores and were handling a large number of documents i.e. over 5000 every month involving large amounts of Modvat credit and urged that these few instances of mistakes made should be taken to be human errors.

4. The learned DR has pleaded that the deptt. has placed trust in the assessees under the SRP scheme and the appellants are required to put their systems in position in a satisfactory manner and they are expected to have their own check system to ensure that such systems failure do not occur. In the present case, he pleaded that the authorities had detected some instances of the double Modvat credit having been taken and he has urged that the appellants are liable to penalty and the penalty levied cannot be considered as excessive.

5. We have considered the pleas made by both sides. We observe that the appellants have admitted having taken Modvat credit twice over to the amount of Rs. 4 lakhs. The said amount has already been credited. In the facts and circumstances the appellants are liable to penalty. We observe as rightly pointed out by the learned DR that it is the appellants who have to ensure that such errors in the matter of Modvat credit are avoided. The appellants have urged that they had worked out a system to detect such errors. Obviously their system requires modification. The appellants should have their own internal audit system to detect such errors. It has not been brought to our notice that such a system exists to ensure detection of such double entries within a reasonable time. In the present case, the learned DR has pleaded that the appellants had enjoyed the benefit of additional credit over a couple of months and the appellants in the normal course would have paid interest in case they borrowed the said amount from the Bank. We observe the appellants have enjoyed the benefit of over Rs. 4 lakhs of amount for a couple of months as stated by the learned DR for which benefit they were not entitled. Admittedly, there was a failure in the appellants system. The department has reposed a lot of trust in the assessee under the SRP scheme and for the appellants failure in the matter in not organising their affairs to ensure that these double entries are not made, they are liable to be penalised. We in the circumstances hold that the appellants are liable to penalty. Taking into consideration the amount involved and the period for which they had used this

amount, we hold that ends of justice would be served if the penalty is reduced to Rs. 60,000/- (Rupees sixty thousand). But for the above modifications, the appeal is otherwise dismissed.