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SooperKanoon Citation : sooperkanoon.com/14513

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-15-1998

Reported in : (1999)(107)ELT80Tri(Mum.)bai

Appellant : Ramesh Kumar P. Singhvi

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. These 44 stay applications arise out of the same impugned order and therefore they are being dealt with in this common order.

2. M/s. Krishna Dyeing & Finishing Works processed grey fabrics received from merchants. In a visit to their factory on 17-3-1997 the officers of Central Excise detected some finished stock which was not recorded in the statutory registers. They also seized two note books in which details of cloth processed by the Mills were recorded. On comparing the details given in these two note books as also the details given in 9 job lot cards with the statutory Central Excise registers including Form IV register, the Officers found non-recording of considerable quantity of grey fabrics received for processing and resultant less payment of duty. The statements were recorded of the Partner Shri J.B. Lakhadia, the Printing Master Shri Modi, Assistant to Printing Master Shri Ingle, Excise Clerk Shri Jadhav, as also those of the merchant manufacturers who had sent the grey fabrics for processing. On the basis of these investigations the Officers calculated duty not paid by the Mills at Rs. 40,26,799/-. During the course of investigations, the Mill deposited the entire amount of duty so calculated.

3. Thereafter show cause notice dated 15-9-1997 was issued seeking recovery of the duty short levied, seeking confiscation of the unaccounted goods and alleging liability to penalty on account of the assessee company, Shri Lakhadia and the 42 dealers. After hearing the concerned persons, the Commissioner passed the impugned order confirming duty, confiscating the excess goods as well as the plant, machinery and factory building, etc., but permitting the redemption on payment of appropriate fine. He imposed penalty on the assessee firms equal to the amount of duty evaded in terms of Section 11 AC of the Central Excises and Salt Act, 1944 read with Rule 173Q of the Central Excise Rules, 1944. Under 209A of the said Rules he imposed a penalty of Rs. 1 lakh on the Partner Shri J.B. Lakhadia as also varying penalties on the 42 merchant manufacturers. On the manufactures the quantum of penalty was equal to the duty evaded on the proportionate quantum of fabrics. These various applications seek waiver of pre-deposit of penalty and fine, as also stay on recovery thereof.

4. Shri Willingdon Christian, the learned Advocate on behalf of the applicants clarified that since the contested duty has been paid even before the issue of show cause notice he is withdrawing the prayer as regards duty. As regards the penalty imposed he submitted a copy of the Order No. 1955-56/98-WZB, dated 15-6-1998 - 1999 (105) E.L.T. 56 (Tribunal) wherein the Tribunal had waived pre-deposit of penalty of Rs. 1.20 crores imposed on a Mill in similar circumstances for evasion of duty amounting to over Rs. 64 lakhs. He submitted that it was a normal practice of the Tribunal to show this consideration where the entire amount of duty is voluntarily paid. Shri Willingdon further submitted that it was a normal practice of the Tribunal to stay the operation of the order confiscating the land and building, etc. so that the normal working of the unit was not disturbed. He submitted that he was not arguing on the merits of the case although he did submit that the prayer made before the Commissioner for permission to cross-examine punch witnesses, etc. had not been dealt with in the impugned order. He did not advance any arguments on the financial hardship, etc.

5. Shri S.V. Singh, the learned DR arguing for the Revenue claimed that although in an isolated example the Tribunal may have waived penalty, in the entirety it cannot be made as a standard practice. He also pressed that where the penalty

had been adjudged in terms of Section 11 AC there cannot be any scope for granting any stay of the penalty.

6. We have carefully considered the submission made before us. Section 11 AC makes it mandatory for the adjudicator to impose a penalty equal to the duty determined as short levied and payable. The wordings under other Rules such as 173Q(2) prescribe a ceiling for the penalty.

Section 11 AC has a proviso for proportionate reduction of the penalty in case the duty determined is reduced in appellate proceedings.

Section 35F empowers the Commissioner (Appeals) or the Appellate Tribunal to dispense with the deposit of either the duty demanded or the penalty levied or both. The authority under Section 35F has not been curtailed after introduction of Section 11 AC. In other words although when finally judged, the penalty at all times shall be equal to the amount of duty short levied and confirmed, for the purpose of grant of stay the provisions of Section 11AC do not ride over the provisions of Section 35F.7. In addition to the statement made by the learned Advocate, I also find that the Tribunal in a number of cases held that where duty has been voluntarily been paid full waiver of pre-deposit of penalty was appropriate.

8. On consideration of the submissions and on finding that the entire duty has been deposited we waive the requirement of pre-deposit of penalty imposed on all the 44 applicants. The order of confiscation of plant and machinery, etc. shall be held in abeyance pending disposal of this case, on the applicants undertaking not to dispose of any portion thereof during the pendency of the appeal as also on giving a bank guarantee of Rs. 1 lakh to the jurisdictional Commissioner. The undertaking and bank guarantee shall be submitted within 4 weeks from today.