

Mirc Electronics Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-1999

Reported in : (1999)LC386Tri(Mum.)bai

Appellant : Mirc Electronics Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. These two applications are for waiver of duty of Rs. 29.79 lakhs approximately and penalties of Rs. 28,42,674/- under Rule 57U(6) and Rs. 1,36,204/- under Rule 57-I (4) and redemption fine of Rs. 10 lakhs on plant and machinery and Rs. 2 lakhs imposed on Vijay Kumar the other applicant, the assessee's Company Secretary.

2. Having heard both sides we find that out of the entire duty amount except Rs. 75,000/- has been deposited. It is contended that the balance is not required to be paid. Penalty imposed on the assessee is prima facie not maintainable in view of the fact that it took credit wrongly allegedly to have been taken prior to 9-1-1996 in view of the fact that the credit was taken January to August, 1996 whereas the Rules 57U(4) and 57U(6) were enacted on 23-7-1996. There is nothing in the order of the Commissioner or in the notice justifying the imposition of penalty on Vijay Kumar as distinct from any other employee or Director of the company. The fact that as Company Secretary he was incharge of the financial affairs of the company prima facie would not be sufficient to impose the penalty on him in the absence of evidence of the involvement and participation in the alleged

contravention. We accordingly, waive deposit of penalties imposed on both applicants, redemption fine and stay their recovery as well as of the remaining duty amount.

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