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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-08-2000

Reported in : (2000)(71)ECC554

Judge : J T J.H., G Srinivasan

Appellant : Visen Fabrics

Respondent : Commissioner of Central Excise

Judgement :

1. When these two applications seeking stay and waiver of the penalties was argued by Shri Prakash Shah Advocate, it appeared that the issue being small and well defined, the main appeals themselves could be taken up for the disposal. This was done after hearing Shri V.K.Choubey the Ld. DR for the revenue.

2. The facts being common and the appellants being the same these appeals are being disposed of after granting waiver of the penalties imposed in this case.

3. The appellants were operating under the provisions of Rule 96ZQ of the Central Excise Act, 1944. In terms of this rule a specific amount per Chamber per month had to be deposited by such processors by the 15th of each month for that month. Sub-rule 5 read as follows: If an independent processor fails to pay the amount of duty or any part thereof by the date specified in Sub-rule (3), he shall be liable to,-- (i) Pay the outstanding amount of duty along with interest at the rate of twenty-four per cent, per annum calculated for the outstanding period on the outstanding

amount, and (ii) a penalty equal to an amount of duty outstanding from him at end of such month or rupees five thousand, whichever is greater.

4. In the instant case in discharging said burden for March 99, there was a delay of one day for part of the amount and two days for the remaining amount. In the case of April 99 there was delay of one day.

The Assistant Commissioner in his order observed that the assessee had already deposited the interest in terms of Clause (i) of the Rule Sub-rule 5 (supra). He further held that in terms of Clause (ii), he was bound to impose penalties equal to the outstanding amount.

Therefore for the delay in the month of March, he imposed a penalty of Rs. 7.5 lakhs and for the delay in the month of March imposed penalty of Rs. 4,83,870. Against this order the assessees filed two appeals.

The Commissioner (Appeals) directed them to pre-deposit the entire penalty in each case and on their failure to do so he dismissed their appeals. In doing so he had not given an opportunity for fresh hearing to the assessees. In identical circumstances this Tribunal has remanded proceedings back to the Commissioner for decisions de novo. But in the present case we do not do so because the very sustainability of the high quantum of penalty is the issue involved.

5. Shri Shah submits that the wording of the Sub-rule 96ZQ does not indicate that the penalty is mandatorily to be imposed as equal to the amount delayed in payment. He submits that the language of Section 11 AC of the Central Excise Act, 1944. Is more specific suggesting imposition of mandatory penalty. He refers to the judgment of the Tribunal in the case of Escorts JCB Ltd. v. CCE, New Delhi 1999 (35) RLT 9 (CEGAT). In this judgment the Tribunal interpreted this provision to mean that a limit was fixed as a maximum limit and that it was not mandatory that in all cases the maximum amount should be imposed as penalty. Shri Choube here makes a valid point and that is the provision as to interest is also mandatory and no discretion could be shown either for the payment of interest or for the imposition of penalty. We find that the question of payment of interest has not been agitated before us. We also observe that by virtue of Section 11AA and

Section 11AB of the Act, the interest on delayed payments of duty has been elevated to the status of the recovery of duty Under Section 11A of the Act. The language used in the said section is that "the. person liable who is to pay duty shall be liable to pay interest". The wording used in the rule before us is "he shall be liable to, a penalty". There is an essential distinction in the manner in which the rule has been framed from the manner in which the section has been framed. Even when section suggests the mandatory nature the Tribunal in the cited order has given a different interpretation. On both the counts we find that the belief of the Assistant Commissioner that he was under obligation to levy equivalent amount of penalty was not correct.

6. In the case of payment required to be made in March our attention has been drawn to an order of abatement No. 105/99 dated 24.12.99 passed by the Jurisdictional Commissioner. In this order on account of closure of stenter in March 1999 an abatement was given to the extent of Rs. 4,83,870. The duty initially held be short paid in this month was reduced substantially as a consequence. Shri Prakash Shah would plea that the abatement should be held to take effect next month, since to that extent the assessee would be required to pay less. We do not find force in this arguments especially when order of abatement is made only in December 99.

7. Thus, we find that the late payment was not deliberate but was on account of some internal problem. It was also correct that by virtue of the requirement of payment at the middle of the month when some goods are yet to be processed, part of the duty to be paid is in the nature of deposit for future clearances. We find that the Assistant Commissioner has accepted these two grounds. We therefore reduce the penalties to token proportions to Rs. 5,000 in each case. The appeals are allowed in these terms.