

B.C. Sharma Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-11-2000

Reported in : (2000)(71)ECC854

Appellant : B.C. Sharma

Respondent : Commissioner of Central Excise

Judgement :

1. Appeal 2696/99 is at the instance of M/s. Agro Engineers and connected appeal is by its partner Shri B.C. Sharma. The firm is engaged in the manufacture of Nuclear Power Project Plant/Machinery and their part thereof. Even though they were receiving Central Excise Duty from the customers, it was not passed on to the Central Govt./Deptt.

So, show cause notice was issued, demanding duty to the tune of Rs. 6,24,407.88. Company filed detailed objections to the show cause notice. After considering the contentions, the adjudicating authority confirmed the demand laid down in the notice. A similar amount was also directed to be paid as penalty under Section 11 AC of the Act. Interest was levied under Section 11AB of the Act. The firm was ordered to pay a penalty of Rs. 2 lakhs under Rule 173Q. Invoking the Provisions contained in Rule 209A of Central Excise Rules, Sh. B.C. Sharma, Partner of that firm was imposed a penalty of Rs. 50,000/-. This order was challenged before the Appellate Authority. Appeals filed by the firm and Partner were disposed of by that Authority by Order-in-Appeal No. 80-81 (KDT) CE/JPR-I/99 dated 11.08.1999. By that order penalty imposed on the firm under Section

11AC and interest levied under Section 11AB were set aside. Remaining part of the adjudicating authority was confirmed. Hence this appeal.

2. When the appeal came up for final hearing, Id. Counsel representing the appellant firm did not dispute the duty liability of the firm.

According to learned Counsel, the firm was rightly found liable to pay duty amounting to Rs. 6,24,407.88. So the said demand against the firm is confirmed.

3. Argument advanced by learned Counsel was that the penalty imposed on the firm under Rule 173Q was too high and that the partner of the firm could not have been made liable for any penalty invoking the Provisions contained in Rule 209A of the Rules. On the facts of this case, we do not find any reason to show any leniency to the firm for the simple reason that they were clearing excisable goods on realising duty from the customers and that duty was not passed on to the Central Government/Department. In such a situation the penalty imposed on them invoking the Provisions contained in Rule 173Q calls for no interference. When the amount of duty evaded is taken into consideration, namely, Rs. 6,24,407.88, imposition of penalty of Rs. 2 lakhs is on the lighter side. We do not find any ground to interfere with that penalty.

4. M/s. Agro Engineers Ltd., Jaipur is a partnership firm. That firm has been imposed a penalty of Rs. 2 lakhs. Thereafter we do not find any justification for imposing any penalty on partner of that partnership firm. So the penalty of Rs. 50,000/- imposed on Sh. B.C.Sharma, Partner of that firm is vacated.

5. In view of what has been stated above, we dismiss the appeal 2696/99-A filed by the firm and allow the appeal 2697/99-A filed by the Partner, namely, Shri B.C. Sharma.

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