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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-20-2001

Appellant : M/S. Newton Engineering and

Respondent : Commissioner of Central Excise and

Judgement :
1. The appellants cleared ferrous scrap without payment of duty during the period 20.11.1994 to 16.10.1996. Show cause notice was issued on 24.4.1998 seeking recovery of duty of Rs. 1,77,431/-. However in November, 1996 the assessees had already paid the duty under protest.

The Deputy Commissioner noted this fact in confirming the duty. He imposed a penalty of like amount on the assessee company and ordered recovery of interest. He also imposed penalty of Rs. 20,000/- on the general manager of the company under rule 209A of the Central Excise Rules, 1944. An appeal was filed by the assessee company. The claim was made that the provision of section 11AC and of section 11AB of the Central Excise Act, 1944 were not applicable. The Commissioner relied upon the circular of the Board bearing No. F.354/118/96/BRC dated 6.1.1997 which held that where the show cause notices are issued after the coming into force of these provisions, the provisions could apply.

Against this order tow appeals were filed. One by the company and the second by the general manager along with applications for waiver of pre-deposit of the penalties. On hearing Shri J.C. Patel for the applicants and Shri Choubey for the Revenue, the appeal of the assessee company was taken up for disposal.

2. In the following judgments it has been held that the provisions of sections 11AC and 11AB would apply only where the contravention were committed during the period when they were in force. It was held that these provisions did not have retrospective appeal.Lakshmi Packaging (P) Ltd. vs. CCE (2) Marcandy Prasad Radhakrishna Prasad Pvt. ltd. vs. CCE 1998 (102) ELT 705 (T) 3. Shri Choubey refers to single member decision reported in 1998 (99) ELT 134 which states that the provisions do not apply to cases prior to the date of enactment of the Finance Bill. This order does not indicate the ratio of the earlier cited orders.

4. Applying the law in such a manner I find that only one clearance made on 16.10.1996 where the value was Rs. 29,260.55 would attract these two provisions. This is as per annexure A to the show cause notice. The penalty under section 11AC would sustain for Rs. 4,039/- and interest on this amount would also sustain. The penalties and the interest charge beyond these amounts are set aside.

5. As regards the appeal field by Ramprasad R. Chari, I find that the impugned order does not make any reference of any appeal filed by Ramprasad Chari before the Commissioner (Appeals). This appeal bearing No. E/3368/00-Mum, therefore does not survive and is dismissed.

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