

Bajaj Auto Ltd. Vs. Commissioner of Cen. Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-26-2001

Judge : J Balasundaram, J T J.H.

Appellant : Bajaj Auto Ltd.

Respondent : Commissioner of Cen. Excise,

Judgement :

1. The Authorities below have confirmed the differential duty demand of Rs. 1,45,572.89 on waste and scrap of iron and steel which attracted basic duty at the rate of Rs. 800/- P.M.T. + SED at the rate of 15% (instead of Rs. 600 P.M.T. + SED paid by the appellants) and on waste and scrap of aluminium on which SED payable was 15% (instead of 10% as paid by the appellants) during the months of April and May 1992. In addition, a penalty of Rs. 29,000/- has been imposed on the appellants.

The appellants do not contest the duty demand which has been paid, but challenge the imposition of penalty on the ground that the duty amount was paid by them prior to the adjudication of the show cause notice.

2. The applicants have asked for decision on merits and hence we heard the departmental representative and perused the records and the written submissions.

3. The undisputed fact is that duty was not paid at the correct rate at the relevant point of time viz. when the waste and scrap was cleared from the appellants'

factory. Hence, contravention of Rule 173 of the Central Excise Rules stands established. Therefore, Rule 173Q which provides that penalty can be imposed if any excisable goods are removed in contravention of any of the provisions of the Rules, stands attracted. Taking into account the amount of duty involved, penalty of Rs. 29,000/- is not excessive. Accordingly, we uphold the same and rejected the appeal.

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