

Commissioner of Central Excise, Vs. L.G. Electronics

Commissioner of Central Excise, Vs. L.G. Electronics

SooperKanoon Citation : sooperkanoon.com/27319

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-23-2002

Reported in : (2002)(141)ELT673TriDel

Judge : K Usha, N T C.N.B.

Appellant : Commissioner of Central Excise,

Respondent : L.G. Electronics

Judgement :

1. Appeal No. E/446/2001-NB(D) has been filed by the Revenue on the ground that the penalty imposed in the impugned order is not in conformity with provisions of Section 11AC of the Central Excise Act inasmuch as the penalty imposed is not equal to the amount of duty evaded. The appeal contends that penalty equal to the duty determined is mandatory under Section 11AC and that there is no discretion in the adjudicating authority to impose a lower penalty.

2. Through Cross-objection E/Cross/156/2001-A the assessee seeks setting aside of the impugned order.

3. We have perused the records and have considered the submissions made on behalf of both the sides. The material facts of the case are that appellants are a manufacturer of consumer durables. The Colour Television Sets manufactured by them were liable to excise duty based on the value worked out from the Maximum Retail Price (MRP) declared on the packages of the Colour Television Sets in

terms of Section 4A of the Central Excise Act, 1944. The appellant's paid duty on the basis of MRP and removed the Colour Television Sets manufactured by them.

However, investigation carried out by the Central Excise Authorities showed that in respect of sales in certain areas like Bihar and Northeast of the country, the appellants' local offices had circulated some higher, revised MRPs, which were different from the MRPs printed on the packages of Colour Television Sets. Thereupon, the respondents paid the differential Central Excise Duty based on the higher MRPs indicated in the circulars in respect of the goods cleared for the period 1-4-98 to 19-12-98. Through the present cross-objection the respondents have challenged levy of duty based on the prices indicated in the circulars issued by their sales formations in the field.4. With regard to Revenue's appeal we find that the issue is no more res Integra in view of the following observations of the Hon'ble Madras High Court in the case of CCE, Tiruchirappalli-I v. CEGAT, Chennai - 2001 (133) E.L.T. 536 (Mad.) :- "2. Section 11AC of the Central Excise Act, 1944 provides for penalty for short levy or non levy of duty in these words :- ".....the person who is liable to pay duty as determined under subsection (2) of Section 11A shall also be liable to pay a penalty equal to the duty so determined." 3. Rule 173Q of the Central Excise Rules provides for penalty as follows: ".....all such goods shall be liable to confiscation and the manufacturer, producer or license of the warehouse, as the case may be, shall be liable to a penalty not exceeding three times the value of the excis,-able goods in respect of which any contravention has taken place." 4. In this case, the Tribunal has exercised its discretion and reduced the quantum of penalty. The Revenue seeks reference of the question as to whether the discretion so exercised could at all have been exercised, having regard to the fact that a penal provision had been invoked.

5. We do not consider it necessary to call for any reference from the Tribunal having regard to the pronouncement of the Supreme Court to which we have already referred at the commencement of this order.

Despite prescription of penalty in the statutory provision, the element of discretion still lies and what is provided in the provision is the maximum. Discretion, which should no doubt be exercised judiciously, can be exercised, having due regard to

the facts and circumstances of the case, which is what the Tribunal has done. We do not find any merit in this petition and the same is accordingly dismissed." As the present appeal canvasses a legal position to the contrary, it has no merit.

5. We are not able to find any force in the cross objection also inasmuch as the appellant had accepted their liability for the differential duty and had made good the amount during the investigation itself. After agreeing to the liability during the investigation itself and not contesting the demand in the adjudication proceeding also, the appellant cannot be permitted to get out of the conceded duty liability through filing a cross objection in response to the Revenue's appeal.

6. In the result, both the appeal and cross objection are dismissed as having no merit.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com