Essar Machine Works Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-28-2002

Reported in : (2002)(82)ECC349

Judge : G Srinivasan

Appellant : Essar Machine Works Ltd.

Respondent : Cce

Judgement :

1. The application for stay was put up for hearing. But since the matter lies in a short compass, the appeal itself was taken up for disposal after granting waiver of pre-deposit, with consent of both the sides.

2. The issue involved in this appeal is whether penalty and interest can be imposed on the appellants before me for violation of Rule 173GG(3) of the CE Rules, 1944. The assessee is engaged in the manufacture of parts of tractors falling under chapter heading 87.08 and parts of textile machine falling under Chapter heading 87.48. They paid duty on a monthly basis in terms of Rule 173GG. The duty liability for the month of August 89 (sic) [August 1999] was paid on 15.10.99 instead of 15.9.99. Show clause notice dated 6.12.99 was issued for imposition of penalty and demand of interest.

3. The reason advanced by the learned Counsel before me was that there was shortage of manpower. The appellants have accepted the delay in payment of

duty. That is what the appellate authority states in his order. The learned Counsel pleaded for leniency as there was sufficient balance in the PLA as on 15.9.99. Same plea is reiterated before me also as was pleaded before the lower authority. It is an admitted position as revealed in the facts that the appellants did not make any debit entry in the account current as envisaged under Clause (d) of Sub-rule (I) of Rule 173GG The argument of the learned Counsel very effectively put is that this violation should not be construed as a serious misdemeanour so as to attract imposition of penalty and interest. This argument has been considered by both the authorities below. I am of the opinion that the Govt. has given latitude in not insisting on payment of duty prior to the removal of goods each and every time by the assessee. When that is the position, when the assessee fails to follow the mandatory provisions of law which is contained in Rule 173GG (1)(d) of the CE Rules, it attracts penalty.

The arguments of the learned Counsel that it is only a technical violation or procedural infraction cannot be countenanced. I am firmly of the view that such type of violation should be curbed. The law has to be followed in letter and spirit. I am not convinced by the arguments made by the learned Counsel though it was interesting. With this observation however, I reduce the penalty from Rs. 14,500 to Rs. 10,000 (Rupees Ten thousand) and the interest from Rs. 1216 to Rs. 800 (Rupees Eight Hundred). With this modification, the appeal is disposed of.