

Control Engineers Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-11-2002

Reported in : (2003)(106)LC385Tri(Mum.)bai

Judge : S T Gowri

Appellant : Control Engineers

Respondent : Cce

Judgement :

1. The representative, S.H. Jain, brother of proprietor P.H. Jain requests adjournment on the ground that the proprietor has gone to Vadodara. He is not able to explain why he could not return. I therefore decline to adjourn.
2. After hearing the departmental representative. I purpose to dispose of the appeal itself.
3. The appeal is against the order of the Commissioner (Appeals) confirming the penalty imposed on the appellant for delay in paying duty on goods manufactured and cleared by it and ordering recalculation of the interest liability. The appeal is limited to the penalty. The Dy. Commissioner in his order in original has found that the appellant delayed payment of duty of Rs. 20,000/- on goods cleared in August 1999 payable by 15.9.1999 by about six days and delayed payment of goods cleared in September payable by 15th October by various periods ranging to 32 days.

4. The appeal does not deny the delay in payment of duty but attributes it to "genuine financial and liquidity crisis" claiming that there was general recession in the industry and lack of demand for the goods and delay in payment by suppliers. This penalty that is imposed, which is the maximum provided in law, is excessive. Case law is cited in support of the claim that the penalty referred to in Rule 173GG(3) being the maximum permissible need not be imposed in all cases.

5. The delay, in some cases considerable, in payment of the duty is not denied. Prior to insertion of Sub-rule (1) of Rule 173GG on 26.5.1999, every manufacturer was required to pay duty on the goods that he manufactured before they were removed from the factory. The amendment made on 26.5.1999 permitted a manufacturer availing of an exemption under a notification based on value of clearances in a financial year to pay duty on the goods manufactured and cleared by him during a particular month within 15 days of the following month. The rule in effect gave a manufacturer a minimum period of 14 days and a maximum number of 45 days depending upon the matter in question within which to pay the duty. The benefit of the interest due on such quantity would accrue to the manufacturer. Despite the facility being made available, the appellant has delayed payment of the duty. The explanation tendered for the delay difficult condition in the market and failure on the part of the buyer to pay is not acceptable. There was no compulsion on the appellant to sell the goods without recovering the purchase price or any part of it from the buyer. It was open to the appellant to accept belated payment or indeed, if he chose, to write off the amount payable by the buyer of the goods. That does not however mean that the appellant could do as he like in regard to payment of dues to the government. The appellant has thus abused the facility provided in law by considerably delaying payment. I therefore do not find any case for reduction of the penalty.