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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-22-2002

Reported in : (2003)(151)ELT419Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Fujitsu Icim Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. The notice issued to the appellant demanded duty of Rs. 3.72 crores approx. alleged to have been short levied on computers that it manufactured and cleared. It invoked the extended period of limitation.

The Collector confirmed the demand for duty but felt that the facts did not justify imposition of penalty. The assessee appealed this order to the special bench of the Tribunal. That bench found that the extended period of limitation would not be available and the demand for that period was barred by limitation and remanded the matter for determination of short levy in the normal period of limitation.

2. An appeal, in the meantime, had been filed by the department against the same order questioning the correctness of the Collector's action in not imposing penalty. Disposing of this appeal, the Tribunal at Bombay noted that since the matter has already been remanded to the Collector for determining the duty within the normal period of limitation, he should also decide on penalty. It is the order that the

Commissioner has passed in pursuance of these orders, that is appealed before us. In that order, the Commissioner has confirmed the demand for duty of Rs. 434/- within the normal period but imposed a penalty of Rs. 10.00 lakhs under Rule 173Q.3. We find unusual in the Commissioner's order in imposing such a penalty. The special bench clearly held that the extended period of limitation would not apply and remanded the matter only for determining the duty payable for the normal period. The value of these goods on which duty has been demanded of Rs. 434/- has not been quantified; we are told by the counsel for the appellant that the rate of duty is around 21%. The value, as he says, therefore could not exceed Rs. 2500/-. Therefore the maximum penalty imposable under law is three times this amount i.e. Rs. 6000/-. We have already noted earlier that in the first order of adjudication the Collector has found no ground for imposition of penalty. In the present order, the Commissioner has only said that the penalty is imposable because the goods have been removed without proper payment of duty. We find it difficult to resist the conclusion that the action of the Commissioner in imposing penalty is intended to by pass the order of the Tribunal holding that the extended period of limitation is not available. The action of the Commissioner in imposing penalty of Rs. 10 lakhs appears to be a clear attempt to override the order of the Tribunal holding the extended period not applicable.

4. Having regard to these factors we do not consider that imposition of penalty is called for. The appellant does not question the liability to payment of duty of Rs. 434/-.

5. The appeal is accordingly allowed and the impugned order imposing penalty is set aside.

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