

Commissioner of Central Excise Vs. Tyagi and Sons Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-18-2002

Reported in : (2003)(157)ELT310TriDel

Judge : P Chacko

Appellant : Commissioner of Central Excise

Respondent : Tyagi and Sons Pvt. Ltd.

Judgement :

1. This appeal filed by the Revenue is against the order of the Commissioner (Appeals) reducing the quantum of penalty from Rs. 49,357/- to Rs. 12,500/-. The appellant is represented by Id. JDR. There is no representation for the respondent, but there is a request from their Counsel for adjournment.

2. After careful examination of the record, I find that the grounds raised by the appellants against the reduction of penalty are prima facie untenable. A final disposal of the appeal, at this stage, will not be prejudicial to the respondents.

3. The original authority had disallowed Modvat credit of Rs. 49,357/- to the party under Rule 57-I of the Central Excise Rules, 1944 and imposed a penalty of equal amount on them under that Rule. In the appeal preferred by the aggrieved party against the order of the original authority, the Commissioner (Appeals) affirmed the order of the lower authority insofar as the demand of duty was concerned.

However, in view of the fact that the entire amount of duty had been debited by the assessee before the show cause notice was issued, the appellate authority reduced the quantum of penalty to Rs. 12,500/-. The limited challenge in the present appeal is against the reduction of penalty amount.

4. Ld. JDR reiterates the grounds of the appeal and submits that, under Rule 57-I(4), it was mandatory to impose penalty equal to the amount of disallowed Modvat credit on the person who availed the credit wrongly by reason of fraud, wilful misstatement, collusion, suppression of facts or contravention of any of the provisions of the Act or Rules with intent to evade payment of duty. Ld. DR submits that clandestine removal of inputs is an admitted fact in this case and, therefore, the respondents' case is squarely covered by Rule 57-I(4). The DR pleads for enhancing the penalty in terms of the sub-rule.

5. I have examined the submissions of the DR. In this case, the duty was actually paid well before the show cause notice was issued.

Therefore, in my view, none of the circumstances contemplated under Rule 57-I(4) for the purpose of imposing mandatory penalty existed in the respondents' case. However, I note, there being no cross-objection from the respondents' side, I have to infer that penalty to the extent of Rs. 12,500/- has been accepted by the party. In the result, the order passed by the Commissioner (Appeals) is affirmed and the present appeal is rejected.

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