

Emkay Elastomers Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-01-2002

Reported in : (2003)(153)ELT156Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Emkay Elastomers

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. The assessees in this case were sending rubber intermediate products to a job worker for manufacture of tread rubber in terms of Rule 57F(4) read with Notification No. 214/86. For availment of the benefit of this notification, the supplier-manufacturer has to give an undertaking to the effect that the goods would be brought back to his factory for further manufacture or for clearance for home consumption or for export. The burden for payment of duty is on the supplier-manufacturer.

In the present case, the goods were cleared from the factory of the job worker. The principal manufacturer issued invoices at the end of every month and discharged the burden of duty. On detection of this procedure, and after issue of show cause notice, the Jt. Commissioner confirmed duty amounting to Rs. 57,375/- acknowledging that a sum of Rs. 53,367/- had been paid. He imposed penalty of equal amount under Section 11AC on the supplier-manufacturer and also of Rs. 5,000/- on the job worker under Rule 173Q and Rule 209A of the

Central Excise Rules, 1944. Two appeals were filed against this order. The Commissioner allowed the appeal of the job worker but upheld the findings in the case of the supplier-manufacturer. The present appeal is filed by the supplier-manufacturer viz. M/s. Emkay Elastomers and also an application for waiver of pre-deposit of the remaining amount of duty not paid amounting to Rs. 3,978/- and also the penalty.

2. During the hearing on the application, it appeared that the issue being small, the appeal itself could be disposed of. Both sides agreeing, this was done.

3. Shri Patil, the Id. Advocate for the appellants submits that the duty was voluntarily paid by them as per their calculation. He submits that the remainder not paid is on account of the belief of the appellants that the duty was calculated wrongly. He, however, does not substantiate this point and admits that he does not wish to press the point. As regards the penalty, it is his argument that Section 11AC would come to play only where short levy had occurred due to fraud, collusion, mis-statement or suppression of facts. He, however, fairly concedes that the show cause notice does make reference to the fact of clandestine clearance. He also refers to judgments in which it has been held that penalties are not maintainable where the assessees have voluntarily deposited the duty short-levied.

4. We have considered the submissions. We are aware of the judgments where the Tribunal have waived penalties imposed where the payments were made voluntarily. In our opinion, the judgments need not be blindly followed. In each case, it should be seen whether the initial short levy was due to bona fide mistake. The burden of payment of duty as per the notification, the conditions of which were accepted by the appellants when they chose to follow the provisions of Rule 57F(4), was clearly placed upon them at the time of clearance. The appellants could not be said to be unaware of the provisions inasmuch as they have even given an undertaking for discharge of the burden of duty. In view of the clear interpretation of the Notification, we are unable to accept the contention of the present applicants that they were under the bona fide mistake or that they had misunderstood the conditions of the notification. The specific wordings of the

Notification would also support the levy of penalty under Section 11AC.5. In reply to our specific question, Shri Patil submitted that the instances were few i.e. about 3 to 4 clearances for a month for a period of about 5 months. We also note that the remainder duty of Rs. 3,978/- is very small. Upholding the impugned order, therefore, we reduce the quantum of penalty to Rs. 20,000/- (Rupees Twenty thousand only).

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