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C.C.E. Vs. Technova Imaging Systems Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-06-2003

Judge : P Bajaj

Appellant : C.C.E.

Respondent : Technova Imaging Systems Ltd.

Judgement :
1. The delay is only of 11 days in filing of the reply. Learned Counsel has no objection if the delay is condoned and appeal is heard on merit.

Therefore, the COD application of the revenue is allowed. With the consent of both sides, I proceed to decide the appeal also on merit.

2. This appeal has been directed by the Revenue against the impugned Order-in-Appeal dated 19.12.2000 vide which Commr. (Appeals) has dropped the penalty of Rs. 50,000/- as imposed on the respondents vide the adjudicating authority's order-in-original dated 26.4.2000.

3. The facts are not much in dispute. Respondents availed modvat credit of Rs. 271357/- during the period from April 1998 to January 1999 on the strength of certain invoices which later on were found to be not proper documents for availing the modvat credit. The respondents thereafter voluntarily reversed the credit vide PLA Entry No. 2136 dated 24.299, 2181 dt. 26.2.99 and 2232 dt. 5.3.99 but the department issued them Show-cause Notice dated 21.12.2000 wherein besides

the reversal of the modvat credit the imposition of penalty was also proposed. Respondents replied to the Show-cause notice of having reversed the modvat credit much before the issue of Show-cause Notice and also further alleged that penalty was not imposable on them. But the adjudicating authority did not accept their plea and imposed penalty of Rs. 50,000/- under Rule 173Q(bb) of the Rules, after observing that the modvat credit amount had been reversed by the respondents prior to the issue of Show-cause Notice.

4. The validity of the above said Order-in original was questioned by the respondents before the Commr. (Appeals) who by following the ratio of the law laid down by the Tribunal in M/s. Dhampur Sugar Mills Ltd. -- 1990 (46) ELT 400 (T) and Eveready Industries Ltd. v. C.C.E., Calcutta I -- 2000 (88) ECR 550 (T), had dropped the penalty against the respondents.

5. Learned SDR has further contended that since initially the modvat credit was wrongly availed of by the respondents, penalty was rightly imposed on them by the adjudicating authority. The impugned order of the Commr. (Appeals) therefore, deserves to be set aside. On the other hand, the learned Counsel for the respondents besides relying on the above said two cases [referred to by the Commr. (Appeals) in the impugned order] has also made reference to the decision of the Tribunal in Net Plast Limited v. C.C.E., Allahabad - 2000 (122) ELT 88 (T), contended that the impugned order of the Commissioner (Appeals) is perfectly in accordance with the law laid down in all these cases and deserves to be upheld.7. Admittedly, the modvat credit though initially availed wrongly, was reversed by the respondents much prior to the issue of the Show-cause notice by the department to them. The reversal of the credit was made during the period Feb.99 to March 1000 while the show-cause notice was issued to them much thereafter on 21.2.2000. It has been consistently ruled by the Tribunal in the above referred cases that where duty had been paid by the assessee much before service of show-cause notice on him, the imposition of penalty would unwarranted. The Commr. (Appeals) has followed the ratio of the law in the above referred cases while dropping the penalty against the respondents. The impugned order passed by him being in confirmity with the law does not suffer from any legal infirmity so as to call for any interference. No law to the contrary laid down in any case has

been referred to by the learned SDR.8. In view of the above discussions the impugned order is upheld and the appeal of the Revenue is dismissed.

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