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Cce Vs. Kew Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-02-2003

Reported in : (2003)(88)ECC535

Judge : P Chacko

Appellant : Cce

Respondent : Kew Industries Ltd.

Judgement :

1. There is no representation today for the respondents in spite of notice. Having examined the records, I am of the view that this appeal of the Revenue can be finally disposed of at this stage after hearing the DR.2. It appears from the record that the respondents were availing the facility of payment of Central Excise duty on fortnightly basis under Rule 8 of the Central Excise (2) Rules 2001; that the original authority had withdrawn this facility for a period of 2 months on the ground of defaults in payment of duty by the party for three fortnights ending 31.5.2001, 15.7.2001 and 31.7.2001; that the order of the original authority was appealed against; that the Commissioner (Appeals) allowed the appeal and that the Revenue has filed the present appeal on the basis of its interpretation of Sub-rule (4) of Rule 8 of the aforesaid rules. Ld. DR has reiterated the ground stated in the memorandum of appeal.

3. I have examined the above ground of the appeal and the submissions of the Ld. DR. Apparently, the original authority issued 4 show-cause notices simultaneously

to the party, each proposing to withdraw the above facility of fortnightly payment of duty, for a period of 2 months in terms of the above sub-rule and four separate orders forfeiting the facility for a total period of 8 months were passed by the adjudicating authority. It appears that the party preferred appeal to the Commissioner (Appeals) against only one of these four orders of the original authority. The ground raised in that appeal was that as the appellants had already suffered forfeiture of the aforestated facility for six months under the other three orders of the original authority, it was not just or reasonable on the part of the said authority to have withdrawn the facility for a further period of 2 months. Ld.

Commissioner (Appeals) accepted this ground and allowed the appeal.

Hence, the present appeal of the Revenue.

4. In this appeal, I find that there is no specific challenge to the finding of the Commissioner (Appeals) that as the appellants had already been denied the facility of fortnightly payment of duty for a period of six months as per earlier orders of the original authority, a further denial of that facility for another 2 months was not fair. Ld.

Commissioner (Appeals) has relied on the Tribunal's decision in Calcom Vision Ltd. v. CCE, Meerut, 2002 (142) ELT 383 to hold that it is not mandatory that, in all cases, the facility should be forfeited for the maximum period. Thus, apparently, Ld. Commissioner (Appeals) has exercised his discretion in the matter and held that forfeiture of the facility for a further period of 2 months was not fair and just as the party had already suffered for a period of 6 months. This Tribunal will not be inclined to interfere with such lawful exercise of discretion by the first appellate authority. It is also noteworthy that, in the present appeal, the appellant has not faulted the reliance placed by the Commissioner (Appeals) on the Tribunal's decision in Calcom Vision Ltd. (supra). In the result, the appeal fails and the same is rejected.

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