Unique Industries Vs. Commissioner of Central Excise

Unique Industries Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/31867

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-13-2003

Judge : S T Gowri

Appellant : Unique Industries

Respondent : Commissioner of Central Excise

Judgement :

1. In the order impugned in the appeal, the Commissioner has confirmed the demand for duty in the notice issued to the appellant, imposed a penalty on it under Rule 173Q and demanded interest under Section 11AB of the Act. The appeal is limited to the demand for interest.

2. I have heard Mr. Deepak Agarwal, proprietor of the appellant, and the departmental representative.

3. The appellant was engaged in the manufacture of parts of motor vehicles and parts of diesel generating sets. By its letter dated 20.9.1993 to the jurisdictional Superintendent, the appellant informed him that owing to ignorance of law and procedure, it had not obtained registration in 1992-93 and that it had, despite crossing the exemption limit of Rs.20 lakhs, failed to pay duty and asked for registration of the factory and indicated its readiness to cross the limit for which guidance was sought. This resulted in the recording of three statements of the appellant. The appellant paid in 1994 duty totalling Rs. 1,70,967/- and duty totalling Rs. 9,265/- in February and May 1996. The notice issued on 2.8.1996

demanded Rs.2,27,000/-from the appellant. By a subsequent corrigendum, penalty under Rule 173Q and interest under Section A11AB of the Act were proposed. The Commissioner has thereafter passed orders impugned in the appeal, demanding duty of Rs. 1,79,703/-, imposing penalty of Rs.5,000/- and demanding interest of 20% under Section 11AB of the Act.

4. It is now well settled that the provisions of Section 11AB, which was enacted in September 1996, cannot apply for the short levy or non-duty paid that arose prior to its enactment. Apart from that, I do not find any case on merits for imposing any significant penalty. The facts make it clear that the assessee came forward on its own and confessed to the department its lapses, indicating its willingness to pay duty. In that situation, there was every justification for not imposing penalty. Mr. Deepak Agarwal says that penalty having been deposited, he is not interested in having it set aside.

5. The appeal is accordingly allowed and the demand for interest set aside.