

U.P. State Irrigation Workshop Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-10-2003

Reported in : (2004)(91)ECC91

Judge : A T V.K., P Chacko

Appellant : U.P. State Irrigation Workshop

Respondent : Cce

Judgement :

1. This is an appeal filed by M/s. U.P. State Irrigation Workshop Division against Order-in-Original No. 5/2003 dated 28.2.2003 by which the Commissioner has demanded Central Excise Duty amounting to Rs. 5,72,691 and imposed equivalent amount of penalty.

2. Shri Anil Mittal, learned Advocate, submitted that the duty demand is not being challenged by the Appellants; that the Commissioner has imposed equivalent amount of penalty under Rule 173Q and Rule 226 of the Central Excise Rules read with Section 11AC of Central Excise Act.

He, further, submitted that the period involved is 1993-94 to 1999 and when the matter was earlier heard by the Appellate Tribunal the matter was remanded vide Final Order No. 475 & 476 dated 14.9.2001 observing that provisions of Section 11AB and 11 AC cannot be made applicable for the period prior to 28.9.96 and the Adjudicating Authority would be at liberty to impose the penalty and interest, if any,

for the clearances made subsequent to the introduction of Section 11 AB and 11AC keeping into consideration the amount of duty involved; that the Commissioner under the impugned Order has again imposed penalty equivalent to the amount of duty which in view of the Tribunal's Order is not possible as the duty has also been confirmed for the period prior to insertion of Section 11AC in the Central Excise Act. He finally mentioned that the penalty imposed is on the higher side considering the fact that the workshop belongs to the State Government and the workshop manufacture parts to repair and replace worn out parts of State owned tubewells.

3. Countering the arguments Shri D.N. Chaudhary, learned SDR, submitted that the duty has been confirmed by the Commissioner under the impugned Order which has been recalculated by the Appellants in their defence as correct; that once the duty has been found to be payable for the last 5 years, the penalty is imposable under Rule 173(Q)(1), read with Rule 226 and also under Section 11AC; that the penalty under Rule 173Q itself could be more than the amount of duty involved. Accordingly imposition of penalty equivalent to the amount of duty is sustainable.

4. We have considered the submissions, of both the sides. As the demand of duty confirmed under the impugned Order is not being contested the same is upheld. We agree with the learned SDR that the penalty is imposable on the Appellants under Rule 173Q(1) read with Rule 226 of the Central Excise Rules, 1944 as the goods manufactured by the Appellants have been cleared without informing the Central Excise department and without payment of duty. The Tribunal, in its earlier Order dated 14.9.2001, had observed that the penalty would be leviable under Section 11AC for the period on or after 28.9.1996 which goes to show that the fact of suppression had been established against the Appellants. There is nothing on record to show that the said Final Order dated 14.9.2001 had been challenged by the Appellants. The learned SDR has rightly pointed out that the penalty under Rule 173Q can be imposed much more than the amount of duty involved as at the relevant time when the show cause notice was issued, Rule 132Q(1) provided for imposition of penalty not exceeding 3 times the value of the excisable goods involved. However, taking into consideration the fact that the Appellants is a

workshop of U.P. State Irrigation department and they are manufacturing parts of power driven pumps for State owned tubewells the penalty imposed is on the higher side. The interest of justice will be met if they are directed to pay a penalty of Rs. 50,000 only. We order accordingly. The appeal stands disposed of in the above terms.

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