

Parshuram Forge Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-11-2003

Judge : A Wadhwa, A M Moheb

Appellant : Parshuram Forge Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. After dispensing with the condition of pre-deposit of amounts confirmed against the appellant, we proceed to dispose of the appeal, with the consent of both the sides.
2. In one appeal penalty of Rs. 8,39,000/- has been imposed for the period June 99 to October 99 and in the other appeal penalty of Rs. 3,56,800/- has been imposed for the period December 98 to May 99 on the ground that the appellants had failed to deposit the duty in accordance with the Annual Capacity of Production fixed by the Commissioner.
3. The appellant's contention is that during all these periods, they were challenging fixation of ACP fixed condition by the Commissioner on the ground that the value of d'factor taken into consideration was not the correct value. The above stand was accepted by the Commissioner, on 29.10.99 when he accepts the claim of the appellant as regards the value of d'factor. However, he raises demand on the ground that the earlier order fixing ACP was in force and the new order made is only prospective. The above observation was made on the ground that the earlier

order was not challenged before any appellate authority.

4. Learned Advocate appearing for the appellant accepts the above duty liability and does not challenge the same. He, however submits that since the appellant had been agitating the matter before the Commissioner as regards the value of d'factor which claim of the appellant was ultimately accepted by the Commissioner, there was no justification for imposition of penalty in these circumstances. He prays for setting aside the same or in the alternative reducing the quantum of penalty.

5. Countering the arguments, Shri. R.K. Pardesi, learned JDR for the Revenue submits that in terms of the provision of Rule 96ZP(3), the appellants are to be imposed identical amount of personal penalty.

Inasmuch as the appellant had not discharged duty liability in accordance with the earlier order of ACP fixed by the Commissioner, the penalty imposed by the lower authority is justified.

6. We have considered the submissions made by both the sides. We find that the issue whether the equivalent personal penalty amount is required to be imposed in terms of Rule 96ZP(3) is no more res-integra and has been set at rest in the case of Bihar Ispat Udyog v. CCE - 2001 (130) ELT (Tri.Cal), wherein it was held that quantum of penalty is the discretion of the adjudicating authority.

7. In view of the fact that the appellant had been agitating the fixation of the annual capacity before the Commissioner and in view of the fact that the quantum was accepted by the Commissioner ultimately with prospective effect, we are of the opinion that the penalty imposed upon the appellant equivalent to duty amount is harsh. Accordingly, we reduce the same in one case from Rs. 3,56,800/- to Rs. 75,000/- and in another appeal from Rs. 8,39,000/- to Rs. 1.50 lakhs. The appellant undertakes to deposit the said reduced amount of penalty within a period of two months from the date of receipt of the order.

8. We make it clear that the appellants have not disputed duty confirmed and payment of interest in accordance with law. Accordingly, we confirm the same. But

for reduction in the quantum of penalty, the appeals are otherwise rejected. Stay petition also gets disposed of.

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