

**Paradise Plastic Enterprises Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-18-2003

**Reported in :** (2004)(92)ECC357

**Judge :** K Usha, N T C.N.B.

**Appellant :** Paradise Plastic Enterprises

**Respondent :** Cce

**Judgement :**

1. Challenge in this appeal at the instance of the assessee is against the order passed by the Commissioner (Appeals) dated 9.5.2003 upholding the imposition of penalty against the appellant to the extent of Rs. 1.25 lakhs and demand of interest under Section 11AB w.e.f. 28.9.96.

2. The appellant is engaged in the manufacture of plastic moulded parts for four wheelers, two wheelers and telephones for which the buyers of finished goods provided moulds free of cost. Except in the case of four such buyers supplying moulds free of cost the appellant had included the cost of moulds proportionately in the assessable value of the final products and paid the duty accordingly. Since the requisite information regarding cost to be amortized was not supplied by four customers, the appellant did not amortize the cost of the moulds supplied free of cost by them. Subsequently, on 12.1.2000 upon receipt of the information from the buyers, the appellant paid the differential duty. The show cause notice was issued to them only on 3.3.2001. The adjudicating authority while confirming the duty

demand imposed a penalty of an equal amount invoking Section 11AC. Interest under Section 11AB was also ordered. He further imposed a penalty of Rs. 50,000 on the Manager (Finance & Accounts) of the appellant company. The Commissioner (Appeals) upheld the invocation of 11AC but reduced the quantum of penalty from Rs. 13,93,980 to Rs. 1.25 lakhs. He set aside the personal penalty imposed on Shri V.K. Gulati and confirmed the liability under Section 11AB for the period from 28.9.96.

3. It is contended on behalf of the appellant that the delay in payment of duty on the amortized cost of the moulds and dies supplied free of cost by four parties was only for the reason of delay in getting the required information from them. There was no suppression of facts on the part of the appellant nor was then any intention to evade payment of duty. Invocation of Section 11AC is, therefore, not justified. The show cause notice was issued nearly after 2-1/2 years of the department having come to know of the short payment of duty. Therefore, the demand is barred by limitation also. In any view of the matter there were conflicting rulings of the Tribunal on the question of includibility of cost of amortized in the assessable value. In *CCE Aurangabad v. Marathwasda (sic) Glass Co. P. Ltd.* 1999(85) ECR 94, *Creative Cartons v. CCE Mumbai*, 1999 (64) ECC 738 (T) : 1999(106) ELT 79 and *Velpack Industries Ltd. v. CCE Mumbai* in Appeal No. E/6222/92-A it was held that cost of moulds and dies supplied free of cost are not includible in the assessable value. In *Flex Industries Ltd. v. CCE* 1997(91) ELT 120 a different view was taken. Subsequently, a Larger Bench of the Tribunal resolved the issue in *Mutual Industries Ltd. v. CCE, Mumbai* 2000(119) ELT 578 (Tri) holding that amortization of cost of moulds was necessary. Under these circumstances, the appellant may not be burdened with the liability to pay penalty especially when it had deposited the duty amount before the issue of show cause notice.

4. We find merit in the contention raised by the appellant. During the relevant period the issue regarding inclusion of amortized cost of moulds in the assessable value of the goods was not finally settled. It is true that the assessee paid differential duty much before the issue was settled by a Larger Bench of this Tribunal. But at the same time when different orders of the Tribunal had taken conflicting views on the liability, it cannot be contended that there was wilful

suppression of fact on the part of the appellant in order to avoid payment of duty.

Under these circumstances, we, therefore, hold that imposition of penalty under Section 11AC was not justified in this case. We, therefore, set aside the demand of penalty against the appellant under the impugned order and allow the appeal.

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