

Commissioner of Central Excise Vs. Kavya Processors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-19-2003

Reported in : (2004)(168)ELT124Tri(Mum.)bai

Judge : S T C.

Appellant : Commissioner of Central Excise

Respondent : Kavya Processors

Judgement :

1. None appeared for the respondents. Shri S.S. Bhagat, learned S.D.R. appearing for the department states that the department's appeal is against the impugned order passed by the lower appellate authority reducing the mandatory penalty of Rs. 4,07,254/- imposed by the adjudicating authority. He states that the reason for imposition of penalty was delay in payment of duty of Rs. 4,07,254/- under the compounded levy scheme and the delay was for the period of two days.

2. After hearing the learned S.D.R. and perusal of the case records, I find that the delay in payment is only for two days for which interest of Rs. 802/- has also been charged. As such, the penalty of Rs. 4,07,254/- imposed under the order in original is excessive and the Commissioner (Appeal)'s order reducing the same to Rs. 50,000/- can not be faulted. In fact, considering the facts of the case, even the amount of Rs. 50,000/- appears to be disproportionately high particularly when any benefit which may have accrued to the respondents by delayed payment has been neutralized by charging interest.

3. It has been contended on behalf of the department that the penalty under Rule 96ZQ is mandatory. However, Rule 96ZQ (5) merely states that if an independent processor fails to pay the amount of duty or any part thereof by specified date he shall be liable to pay the outstanding amount of duty along with interest at the rate of 36% per annum and a penalty equal to the amount of duty or Rs. 5,000/-, whichever is greater. The Rule does not say that the penalty shall be equal to the duty in which case there would perhaps have been no option left for the adjudicating or the Appellate Authority to reduce the penalty. The Rule only says that the independent processor shall be liable to a penalty equal to the duty amount. Hence, the Rule merely casts a penal liability on the independent processor up to a limit equal to the duty amount. It, therefore, follows that the penalty actually imposed has to be within that limit but need not in all cases equal the duty amount.

4. I find that similar view has also been taken by the Hon'ble Supreme Court and the Tribunal while interpreting similar provisions in the following cases :-State of Madhya Pradesh v. Bharat Heavy Electricals - 1998 (99) ELT 33 (S.C.)Hindustan Wires Ltd. v. CCE, Delhi - 2002 (148) ELT 577 (Tri.-Del.) ---- 5. As such, I find no merit in the department's appeal praying for imposition of penalty equal to the amount of duty paid after a delay of two days and the same is rejected.

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