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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-07-2004

Judge : P Chacko, A M Moheb

Appellant : Cms Computers Ltd., Shri A.V.

Respondent : Commissioner of Customs (Prev.)

Judgement :

1. These appellants are aggrieved by imposition of penalties on them by the Commissioner of Customs (Prev.) Mumbai as per Order No, CCP/MGV/ADJN./19/97 dated 08/04/1997. Under the impugned order, penalties were imposed on some oilier persons also. The relevant portion of the operative part of the Commissioner's order is extracted below:- "1 impose the following amounts of penalties on the persons firms mentioned below under Section 112(a) & (b) of the Customs Act, 1962;8. Shri A.V. Gopalkrishnan : Rs. 1.5 lakhs (Rupees One lakhFifty thousand)10. Shri Ashok Wahi : Rs. 2.5 lakhs (Rupees Two lakhsFifty thousand)11. Shri S.A. Kulkarni . : Rs. 1.5 lakhs (Rs.One lakhFifty thousand)." 3. Learned counsel for the appellants submitted that M/s Advance Technology Devices had settled their disputes with the department under the Kar Vivad Samadhan Scheme, 1998 and accordingly their appeal against the above order of the Commissioner was dismissed by the Tribunal as per Order No. C-I/600-604/WZB/2003 dated 06/03/2003. We have seen the Tribunal's order and note that M/s Advance Technology Devices had settled their disputes with the department under the Kar Vivad Samadhan Scheme, 1998. This factual position

has not been contested by the D.R. The learned counsel then argued that, as the main party covered by the relevant Show Cause Notice settled their disputes with the department under the K.V.S. Scheme, 1998, the dispute between the co-noticees and the department should also be treated as settled.

Counsel, in this connection, relied on the Supreme Court ruling in U.O.I. v. Onkar S. Kanwar -2002 (52) R.L.T. 871 (SC).

4. Learned D.R., on the other hand, submitted that, in the case considered by the Supreme Court, the main party was a company and co-noticees were Directors and officers of mat company. In the present case, the appellants had no such relation with the main party namely M/s Advance Technology Devices. Learned D.R. sought to distinguish the cited case in this manner.

5. We have carefully examined the submissions. It is not in dispute mat a common show-cause notice was issued to M/s Advance Technology Devices and all other parties named in the operative part of the impugned order. A perusal of the impugned order, particularly para 60 thereof, indicates that M/s Advance Technology Devices were the main party among the noticees. It is also not in dispute that M/s Advance Technology Devices had settled their disputes with the department under the K.V.S.Scheme, 1998. Any penalty imposed under the Customs Act was also eligible for settlement under the said scheme, which is clear from the definition of 'tax arrears' and the Explanation thereto under Clause (m) of Section 87 of the Finance (No.2) Act, 1998. In the case of Onkar S. Kanwar (Supra), the Supreme Court considered the Central Government's K.V.S. Scheme (Removal of Difficulties) Order dated 08/12/1998 and held that settlement by the main declarant (under the K.V.S. Scheme) was to operate as a full and final settlement in respect of all other persons on whom show cause notice was issued in respect of the same matter. It was particularly observed by the court that the object of the K.V.S. Scheme (Removal of Difficulties) Order was to give the benefit of settlement by the main party to all other co-noticees.

In view of this ruling of the apex court, we have to hold that the penalties imposed on the present appellants should also be treated as having been settled under the KV.S. Scheme. In the result, the appeals get dismissed as infructuous.