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Techno Spln Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-30-2004

Judge : R K Jeet

Appellant : Techno Spln Pvt. Ltd.

Respondent : Cce

Judgement :

1. This appeal filed by the appellants is directed against the order in Appeal No. 18/2003 (Cex) SLM dated 31.3.2003 by which the Commissioner has reduced the penalty from Rs. 20,000/- to Rs. 10,000/-.

2. Brief facts of the case are that the appellants are manufactures of machinery for pulp and paper making parts. Appellant were clearing the goods by paying duty at the rate of 3% instead of 5% from 10.3.97 to 15.3.97 as they were under the bona fide impression that they were required to pay duty as the rate of 3% only. the rate of duty at 3% was also mentioned in the classification list filed by the them in terms of Notification No. 7/97 CE (NT). As soon as the lapses on the part of the appellants were pointed by the officers on a visit to their unit, the appellants paid the different of duty by debiting in PLA SL No. 7 dated 19.3.97. This was done before the issue of show cause notice dated 24.7.97.

3. Shri S Kandaswamy. learned Consultant for the appellants submitted that since the appellant were under the bona fide belief that duty was required to be paid at 3% and they have also filed classification list mentioning the rate of duty at 3%,

their bona fide is established. In any case they have paid the difference of duty immediately on being pointed out by the officers i.e. much before the issue of show cause notice. He further submitted in similar circumstances, the Tribunal in a number of cases has been taking the view that imposition of penalty is not called for and he prayed for similar orders setting aside the penalty of Rs. 10,000/-.

5. I have considered the submissions made before me. I observe that in similar circumstances, where the assessee have paid the duty on coming to know of the short payment of duty, even before the issue of show cause notice, the Tribunal has allowed the prayer of the assessee for setting aside the penalty.

Few such decisions are in the case of Amritsar Crown Caps (P) Ltd. Vs.

CCE, reported 2002 (140), ELT 437, Ashok Leyland Ltd. Vs. CCE, reported in 2003 (156) ELT 995 and Order No. 1128/2002 of this Tribunal in the case of M/s. GK Alloy Steel Ltd. decided on 24.9.2002. Respectfully following those decisions, I hold that there is no reason for imposing penalty on the appellant and I set aside the impugned order and allow the appeal with consequential relief if any.

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