Kanchan Processors (P) Ltd. Vs. C.C.E.

Kanchan Processors (P) Ltd. Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/34287

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-2004

Reported in : (2004)(167)ELT542TriDel

Judge : A T V.K., P Chacko

Appellant : Kanchan Processors (P) Ltd.

Respondent : C.C.E.

Judgement :
1. M/s. Kanchan Processors (p) Ltd. have filed the present appeal against imposition of penalty of Rs. 12.5 lakhs under Rule 96ZQ(5) of the Central Excise Rules, 1944.

2. Shri K.K. Anand, learned Advocate, submitted that the Appellants are engaged in the processing man-made fabrics which were liable to Central Excise duty under Section 3A of the Central Excise act during the relevant time ; that as per the provision of law the duty was to be paid on 31.8.2000 i.e. last date of the month; that the Appellants had issued a cheque dated 29.8.2000 for Rs. 12,50,000/- for payment of duty for the period 16.8.2000 to 31.8.2000; that unfortunately the amount in words was written as "Rupees Twelve thousand and fifty thousand" instead of Twelve Lakhs fifty thousands though the amount in figures was correctly written; that consequently cheque was returned by the bank; that knowing their mistake the Appellants deposited the duty in cash through TR-6 challan on 1.9.2000; that they also paid interest for one day delay on 4.9.2000; that the

Revenue has levied a penalty of Rs. 12,50,000/* for paying the duty late by one day under Rule 96ZQ of the Central Excise Rules. The learned Advocate submitted that the Madras High Court in the case of Beauty Dyers vs. UOI, 2002 (52) RLT 635 has held that rules issued under Notification No. 42/98 are ultra vires Section 3A of the Central Excise Act; that the Appellate Tribunal has followed the said decision in the case of Shree Sai Prasad Dyg. & Ptg.

Mills vs. CC & CE, Surat, 2003 (56) RLT 100 (CEGAT-Mum.) and the Tribunal had set aside the penalty imposed on the Appellants therein under Rule 96ZQ. He said that the Madras High Court's decision had also been followed by the Tribunal in the case of Hindustan Processors Ltd. vs. CCE, Jaipur, Final Order No. A/89/2004 dated 22.1.2004. Finally he mentioned that the mistake in writing the amount in words was a genuine clerical mistake and they had sufficient balance in their bank account and as such penalty is not imposable.

3. Countering the arguments Shri Vikas Kumar, learned SDR, submitted that as per provisions of Rule 96ZQ(5) if the assessee fails to pay the duty by the specified date for whatever reason the penalty equal to the amount of duty is liable to be paid by him; that the duty has not been paid in the present matter by due date, and therefore, penalty equal to the amount of duty has been rightly imposed. He also submitted that the decision in the case of Beauty Dyers is not applicable to the Bench of the Tribunal in Delhi as the same is outside the territorial jurisdiction of Madras High Court. He also relied upon the decision in the case of Universal Dying and Printing Works vs. CCE, Mumbai-II, 2003 (156) ELT 234 (Tri-Mumbai) wherein it has been held that the decision of one High Court is not a binding precedence for the Court or Tribunal outside the territorial jurisdiction of that High Court. The learned SDR finally submitted that even for unintentional lapse penalty is imposable on the Appellants as has been held by the Tribunal in the case of J.K. Processors vs. CCE. Mumbai, 4. We have considered the submissions of both the sides. In our view, without going into the question as to whether the judgment of the Madras High Court in Beauty Dyers is to be followed by the Tribunal outside the territorial jurisdiction of the Madras High Court, the appeal can be disposed of. It is not disputed by the Revenue that the Appellants had issued the cheque for Rs. 12,50,5000/- on 29.8.2000 with a view to discharge

their duty liability before the end of the month.

It is common knowledge that clerical mistakes do happen while writing the cheque and this is what had happened in the present matter. The Appellants immediately after realizing their mistake has paid the duty by depositing cash in the bank. In this entire process there was a delay of only one day as the duty could be deposited only 1.9.2000 instead of 31.8.2000. In view of these facts and circumstances we do not find that this is a case which warrants imposition of any penalty even of therapeutic proportions as observed by the Tribunal in the case of J.K. Processors (supra). We, therefore, set aside the penalty imposed on the Appellants and allow the appeal.