Commissioner of Central Excise Vs. Samson Controls Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-12-2004

Judge : A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Samson Controls Pvt. Ltd.

Judgement :

1. This appeal is filed against the order of the Commissioner (Appeals) by the Revenue. The Commissioner (Appeals) in the impugned order set aside the interest demanded and the penalty imposed on the respondent under Section 11AB of the Central Excise Act read with Rule 571(5) of the Central Excise Rules and Section 11AC respectively.

2. Briefly the facts are that the respondents cleared final products namely control valves and accessories without payment of duty by availing of exemption under notification 10/97-CE dated 1.3.1997 to various institutions like Department of Atomic energy etc. between the period March 1999 to July 1999. The respondents used inputs on which credit was taken in the manufacture of final products without reversing 8% of the amount calculated on the price at which the final products are sold. On being pointed, the respondents reversed the credit at the above rate even before issue of show cause notice. The amount so reversed is Rs.43,835/-.

3. The original authority while adjudicating the case confirmed the amount, imposed equal amount of penalty under Rule 571(4) read with Rule 173Q further

read with Section 11AC of the Central Excise Rules and Central Excise Act. In appeal the Commissioner (Appeals) set aside the penalty and demand for interest following the ratio of decision of the Tribunal in Netplast Ltd. vs. CCE 2000 (122) ELT 88 where it was held that reversal of credit well before the issuance of show cause notice does not call for imposition of penalty. In Escorts Ltd. vs. CCE 2002 (48) RLT 15, the CEGAT held that no penalty can be imposed under Section 11AC or Rule 173Q if duty is paid before the issue of show cause notice. A series of decision of the Tribunal exist in this regard. It was held that interest also cannot be demanded under Section 11AB in such circumstances. It is now well established that neither penalty can be imposed nor interest can be demanded in cases where the appellant deposits the duty/credit prior to the issue of show cause notice. The Revenue's contention that interest is demandable is not tenable in the light of series of decisions in this regard, one of them (Rashtriya Ispat Nigam) is upheld by the Supreme Court as well.