Commissioner of Central Excise Vs. Hyva Transportation Systems Pvt.

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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 : Hyva Transportation Systems Pvt.

Judgement :

1. This appeal is by the Revenue against the order of the Commissioner (Appeals). Cross objections are filed by the respondent who is also aggrieved by the order of the Commissioner (Appeals).

2. The Revenue appeal is on the ground that the Commissioner (Appeals) erred in reducing the penalty imposed by the original authority under Section 11 AC. The Revenue contends that penalty under Section 11 AC is mandatory and should not be less than the amount of duty sought to be evaded. The Commissioner (Appeals) erred, it was argued, while he reduced the penalty. This issue is settled inasmuch as this Tribunal held that penalty under Section 11AC indicates the maximum amount that can be imposed and is not mandatory. The decision of the Commissioner (Appeals) cannot be faulted.

3. The respondents, in their cross objections, challenged the order of the Commissioner (Appeals) on the ground that the Commissioner erred in retaining any penalty at all in their case as they paid the entire duty even before a show cause notice was issued. The learned consultant relied on the CEGAT's decision

in Rashtriya Ispat Nigam Ltd v. CCE, Vishakhapatnam 2003 (161) ELT 285 wherein the Bench held that penalty is not imposable under Section MAC of the Central Excise Act 1944 as well as under Rule 173Q of the erstwhile Central Excise Rules when duty is deposited before the issue of show cause notice. This decision attained finality when an appeal filed by the department against this decision was dismissed by the Hon'ble Supreme Court on 7.5.2003.

4. I have gone through the rival contentions. The order of the lower adjudicating authority clearly brings out that the respondents had deposited the duty arising out of the two issues - non return of inputs removed from the unit within 180 days and inclusion of transport charges in the assessable value - much before the issue of show cause notice. Following the decision cited supra, I agree with the contention of the respondents and set aside the order of the Commissioner (Appeals) with consequential relief insofar as imposition of penalty is concerned.

5. The Revenue appeal is rejected. The respondents' cross objections are allowed and the order of the Commissioner (Appeals) is set aside.