Commissioner of Central Excise Vs. Arora Products

Commissioner of Central Excise Vs. Arora Products

SooperKanoon Citation : sooperkanoon.com/34945

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-15-2004

Reported in : (2004)(170)ELT564TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Arora Products

Judgement :

1. In this appeal, the Revenue has challenged a part of the impugned order passed by the Commissioner (Appeals) vide which he has set aside the mandatory penalty under Section 11AC on the firm, respondents.

2. I have heard both sides and gone through the record. From the record, it is quite evident that the respondents made clandestine removal of the goods (Branded Chewing Tobacco) involving duty of Rs. 26,520/-. The adjudicating authority confirmed the duty demand along with equal amount of penalty with further penalty of Rs. 5,000/- on the other notice (who is not the respondent in the present appeal). The Commissioner (Appeals) while affirming the order of the adjudicating authority regarding the duty demand, has set aside the penalty under Section 11AC by observing that there was no mens rea on the part of the respondents, while removing the goods without payment of duty. But, in my view, this ground taken up by the Commissioner (Appeals) is wholly misconceived. He has miserably erred in so holding. When the clandestine removal of the goods was

admitted by the respondents and duty liability was not disputed by them, the imposition of penalty under Section 11AC on them was mandatory. It could not be concluded by the Commissioner (Appeals) that there was no mens rea on the part of the respondents to evade the duty especially, when the goods were cleared by them without the cover of invoices. Their plea that slip was left by the Proprietor of the respondents' firm with the Munshi to issue the excise invoices but the said Munshi did not issue the same, could not be legally accepted being totally unfounded and unappealable to the reasons. Therefore, the part of the impugned order of the learned Commissioner (Appeals) quashing the mandatory penalty imposed on the respondents under Section 11AC cannot be legally maintained and is set aside. The mandatory penalty, as imposed by the adjudicating authority under Section 11AC on the respondents, is restored. The argument of the learned Counsel that penalty should be reduced also cannot be accepted for the simple reason that the respondents' own appeal against a part of the impugned order had already been dismissed by the Tribunal for want of prosecution. Moreover, no cross-objection in the present appeal had been also filed by them. It is an appeal filed by the Revenue and as such no concession in the penalty amount can be extended to the respondents.

3. In view of the discussion made above, the impugned order of the Commissioner (Appeals) stands modified. The appeal of the Revenue stands allowed.