

**Commissioner of Central Excise Vs. Sai Machine Tools Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-16-2004

**Reported in :** (2004)(170)ELT100TriDel

**Judge :** P Bajaj

**Appellant :** Commissioner of Central Excise

**Respondent :** Sai Machine Tools Ltd.

**Judgement :**

1. In this appeal the Revenue has challenged part of the impugned order-in-appeal, vide which the Commissioner (Appeals) has set aside the mandatory penalty under Section 11AC and interest imposed on the respondents by the adjudicating authority.

2. I have heard both the sides. The perusal of the record shows that the respondents were earlier working under the SSI exemption Notification 1/93. But during the period in question (1-4-1997 to 25-3-1998), they crossed the exemption limit of Rs. 30 lakhs, but still continued to clear the goods without payment of duty and also did not apply for registration to the Central Excise Department. The duty evaded by them was worked out at Rs. 2,26,578/-. The adjudicating authority confirmed the duty demand and imposed penalty of equal amount under Section 11AC. The said authority also imposed penalty of Rs. 20,000/- on the Director of the respondents. The Commissioner (Appeals) has modified that order of the adjudicating authority by setting aside the mandatory penalty under Section 11AC

on the respondent company and penalty in total under Rule 209A on the Director.

3. Since the Director has not been made a party to the appeal by the Department, the impugned order passed in his favour, cannot be challenged by the Revenue.

4. The learned Counsel has contended that since duty was paid before the issuance of the show cause notice, and that the respondents were ignorant of the law and had no intention to evade payment of duty, therefore, the penalty and interest have been rightly set aside against them by the Commissioner (Appeals). But in my view this contention of the Counsel is wholly misconceived and cannot be accepted. It is difficult to accept that the respondents did not know as to whether they had crossed the exemption limit or not. The fact that they paid the duty before the issuance of the show cause notice could be used as a mitigating circumstance for imposing a lesser penalty than the penalty equal to the amount of duty. But could not be made basis for setting aside the penalty in toto, under Section 11 AC by the Commissioner (Appeals). The payment of duty by the respondents cannot be said to be voluntary in the eyes of law as they did not of their own pay the duty but paid only when they were caught by the Department. The provisions of Section 11AC are mandatory and as such in a case of evasion/non-payment of duty, penalty has to be imposed under the said Section. On the delayed payment of duty, the respondents are liable to pay interest also under Section 11AB. Therefore, the impugned order of the Commissioner (Appeals) in respect of penalty and interest cannot be sustained and is set aside. However, keeping in view the facts and circumstances of the case, the penalty under Section 11AC as imposed by the adjudicating authority, is reduced to Rs. 50,000/-. The respondents are also liable to pay interest from the due date. The appeal of the Revenue accordingly, stands disposed of.

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