SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of Central Excise Vs. B.M.K. Polymers Pvt. Ltd.

Commissioner of Central Excise Vs. B.M.K. Polymers Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/35982

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-16-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : B.M.K. Polymers Pvt. Ltd.

Judgement :

1. Heard the appellant. The respondent is called absent. The respondent has not been served. Earlier, it has been ordered to effect service on the respondent through the Commissioner's Office. There is no intimation of service produced. The matter underwent three adjournments. As the appeal is ripe for disposal, the same is taken up for consideration.

2. M/s. BMK Polymer Pvt. Ltd. alleged to have contravened the provisions of Rule 173-F and 173-G(i) of Central Excise Rules, 1944, read with Section 11-A of the Central Excise and Salt Act, 1994, in as much as they have cleared excisable goods valued at Rs. 16,17,674.75 at concessional rate of duty i.e. 5% Adv. instead at 15% Adv. after crossing limit of Rs. 75.00 lakhs as admissible under Notification 175/86 dated 1.3.86. Thus, they have cleared goods without determining the proper duty payable on the goods cleared in excess of aggregate value.

3. The original adjudicating authority has confirmed the duty demand of Rs. 1,69,855.86 as alleged in the show cause notice.

4. On preferring appeal by the assessee, the Commissioner of Central Excise, Pune, set aside the order passed by the original adjudicating authority in confirming the demand of the duty and upheld the order dated 27.6.97 relating to the rejection of the refund claim of Rs. 2,23,343/-.

5. The Commissioner of Central Excise (Appeals) expressed his views as follows: "In the course of the personal hearing, I, therefore, enquired from the appellant whether he is willing to surrender his claim for refund if the demand is not enforced. He replied in the affirmative.

In my view also, the circumstances of the case are such that the matter should be closed and neither any amount recovered from the appellant nor any amount refunded to him and particularly when the amount to be refunded is in excess of the amount demanded and both the amounts are in respect of the clearance during the same year.

His offence only is that he has charged from some persons 15% rate of duty instead of 5% and has recovered only 5% when he should have actually recovered 15%. But considering that the total value of clearances at 5% do not exceed Rs. 75 lakhs and that this is his first offence or so to say misunderstanding, a lenient view is called for, therefore set aside the order No. 106/CEX/91 dated 20.9.91 relating to confirmation of demand of Rs. 1,69,856/- and upheld the order No. 86/CEX/91 dated 27.6.91 relating to the rejection of the refund claim of Rs. 2,23,343/-. The appeal is disposed of accordingly".

6. After considering the matter at length, we are of the opinion that the assessee, who came under excise net recently, at the most be eligible for waiver of penalty, but he cannot be absolved from duty liability. Therefore, the Commissioner, Central Excise (Appeals) has erred in setting aside the order of the adjudicating authority, who has confirmed the duty demand.

7. We found merits in the appeal filed by the Revenue. Accordingly appeal is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com