Commissioner of Central Excise Vs. Aswm Spinning Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-28-2004

Reported in : (2004)(173)ELT57TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Aswm Spinning Mills

Judgement :

1. In this appeal, the Revenue has sought increase in the penalty amount which the Commissioner (Appeals) had reduced from Rs. 50,000/- to Rs. 2,000/-.

2. The respondents have also filed cross objections seeking setting aside even the duty amount as well as penalty in toto.

4. The facts are not much in dispute. The respondents during August, 99 availed credit of Rs. 4,39,623/- on the strength of photocopy of duplicate copy of the bill of entries. When the jurisdictional range office of the central excise pointed out to the respondents that the credit has been wrongly availed by them, they deposited the amount along with interest on 28-10-1999. Still the Show cause notice was issued to them on 24-11-1999. The adjudicating authority confirmed the demand and imposed penalty of Rs. 50,000/- on the respondents. They, however, filed appeal against that order before the Commissioner (Appeals) wherein they only challenged the imposition of penalty and not the confirmation of duty. The

Commissioner (Appeals) has reduced the penalty to Rs. 2,000/-. The Revenue through the present appeal has sought enhancement in the penalty amount, while the respondents have prayed for setting aside even the duty confirmed, besides penalty, through the cross-objections.

5. So far as the confirmation of duty is concerned, the same cannot be questioned by the respondents through the present cross-objections as they did not dispute the confirmation of duty, against them, by the adjudicating authority, in their appeal before the Commissioner (Appeals), as they only sought setting aside of the penalty. The Commissioner (Appeals) has reduced the penalty to Rs. 2,000/-. But since the duty was deposited by the respondents before the issuance of the show cause notice, this much penalty could not be even confirmed against them, in view of the law laid down by the Larger Bench of the Tribunal in the case of CCE, Delhi-III v. Machine Montell (I) Ltd. - 2004 (168) E.L.T. 466. In the light of this Larger Bench's judgment the plea of the Revenue for enhancement of the penalty also cannot be entertained and accepted. Rather, the impugned order in respect of the imposition of penalty against the respondents cannot be sustained and is hereby set aside.

6. Consequently, the appeal of the Revenue is rejected and the cross-objections filed by the respondents are partly accepted in respect of penalty only.