Commissioner of Central Excise Vs. Barnala Pipes

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-07-2004

Reported in : (2005)(179)ELT74TriDel

Judge : P Bajaj, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Barnala Pipes

Judgement :

1. In these appeals, the Revenue has disputed the correctness of the impugned order in respect of the imposition of penalty under Section 11 AC.2. None has appeared on behalf of the respondents. No request for adjournment has also been received from them. Therefore, we proceed to decide the appeals on merit, after hearing the ld. JDR.3. So far as the duty is concerned, the same was deposited by the respondents before the issuance of the show cause notice. The Commissioner (Appeals) has imposed a penalty of Rs. 500/- each in both the appeals under Section 11AC read with Rule 173Q, obviously keeping in view the amounts of duty which were Rs. 63,873/- and Rs. 60,968/- and deposit of the same by the respondents before the issuance of the show cause notice. The sole contention raised by the ld. JDR is that the penalty was to be imposed equal to the amounts of duty evaded by the respondents under Section 11 AC and Rule 173Q. He has also referred to the ratio of law laid down in Ramesh Kumar P. Singhvi v. CCE [1999 (111) H.L.T. 764 (Tribunal)] and Zunjarrao Bhikaji Nagarkar v. Union of India [1999 (112) E.L.T. 772 (S.C.)] in support of this contention. But we are unable to

subscribe to this contention of the Id. JDR. The Tribunal in the case of Escorts JCB Ltd. v. Commissioner [2000 (118) E.L.T. 650 (Tribunal)] had taken the view that Section 11AC prescribed the maximum limit for imposing the penalty and it is not essential that in all the cases that much penalty should be imposed and that the authority has the discretion to impose the lesser penalty. This judgement of the Tribunal has been followed by the Commissioner. No judgement laying down contrary law has been referred before us. The ratio of the law laid down in Ramesh Kumar P. Singhvi v. CCE (supra) is not at all attracted to the case as in that case it has been only observed that for the purpose of grant of stay under Section 35 F, the provisions of Section 11 AC do not override the provisions of Section 35F. In Zunjarrao Bhikaji Nagarkarv. Union of India (supra), the Apex Court has only observed that imposition of penalty under Rule 1.73Q is imperative and not discretionary. But it has been nowhere ruled that the imposition of the penalty should be the maximum as prescribed under the said Rule.

4. In our view, ld. Commissioner (Appeals) has rightly relied upon the above referred judgement of the Tribunal and after taking into consideration the facts, circumstances of the case, the duty amount and the deposit of the same by the respondents even before the issue of the show cause notice, imposed a lesser penalty. No inference in the impugned order passed by the Commissioner (Appeals) is called for and the same is upheld. The appeals of the Revenue are dismissed. Ordered accordingly.