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

Parth Equipments Vs. the Commissioner of Central

Parth Equipments Vs. the Commissioner of Central

SooperKanoon Citation : sooperkanoon.com/36735

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-07-2004

Judge : A Wadhwa, S T S.S.

Appellant : Parth Equipments

Respondent : The Commissioner of Central

Judgement :

1. On matter being called neither anybody appeared on behalf of the appellants in spite of today's notice of hearing having been sent well in advance, nor is there any request for adjournment. We also note from the records that the appellants were unrepresented on the last two occasions of hearing. Accordingly, we have heard Shri B. Chandra, Ld.

JDR appearing for the revenue and have gone through the impugned order as also the memorandum of appeal.

2. It is seen that the appellants had deposited full amount of duty and the stay petition is only for waiver of penalty amount of Rs. 60,000/-.

We after dispensing with the condition of pre-deposit of penalty, take up the appeal itself for disposal as the issue lies in a narrow campus.

3. The original adjudicating authority confirmed the demand of duty of Rs. 1,31,405/- and Rs. 45,588/- against the appellant on the clubbing of two units and also imposed personal penalty of equivalent amount under the provisions of

Section 11AC of the Central Excise Act. On appeal against the above order, the Commissioner (Appeals) confirmed the demand of duty but reduced the penalty of Rs. 60,000/-. In their appeal memorandum, the appellants have prayed for further reduction in the quantum of penalty.

4 We find that the appellate authority in the impugned order, while confirming the demand of duty accepted the appellant's stand that the duty is required to be re-calculated by treating the entire realization as cum duty price. As such, he has observed that the duty is required to be re-worked out in accordance with the decision of Hon'ble Supreme Court judgment in the case of Maruti Udoyog Ltd., and Larger Bench decision of the CEGAT in the case of Sri Chakra Tyres Ltd., v. CCE reported in 1999 (32) RLT 1 (LB). As such, we find that the quantum of duty, which would be ultimately confirmed against the appellants in the light of the above observation of the appellate authority is not available and is to be worked out by original adjudicating authority.

The quantum of penalty is thus required to be adjusted by the original adjudicating authority after determining the quantum of duty required to be paid by the appellants. Accordingly, we set aside the order of the Commissioner (Appeals) and remand the matter to the Assistant Commissioner for considering the appellant's request for further reduction in penalty dependent upon the quantum of duty to be re-quantified by them.

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