

Cce Vs. Royal Processors (P) Ltd.

Cce Vs. Royal Processors (P) Ltd.

SooperKanoon Citation : sooperkanoon.com/37041

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-08-2004

Reported in : (2005)(99)ECC240

Judge : A Wadhwa

Appellant : Cce

Respondent : Royal Processors (P) Ltd.

Judgement :

1. This is Revenue's appeal against the Order of Commissioner (Appeals) vide which he had set aside the penalty amount of Rs. 31,000 imposed upon the respondents.
2. I have heard Ld. JDR, Shri Randhir Singh for the Revenue/appellants and the respondents are absent.
3. The respondents are engaged in the processing of fabrics and sent one cheque dated 30.9.97 for an amount of Rs. 30,100 to the Chief Accounts Officer, Chandigarh in terms of the provisions of Trade Notice No. 6-CE/84 (4-MISC) dated 22.4.84. After sending the cheque, they made clearances against the same. However, the said cheque was not accepted by the Chief Accounts Officer on the ground that the terms of the Trade Notice does not permit the respondents to avail the facility and the same was returned back to the respondents through their jurisdictional Central Excise authorities. In the meanwhile, the respondents had

cleared the goods. However, on receipt of the cheque, they deposited the duty amount for the goods cleared in the meanwhile along with interest.

4. Proceedings were initiated against them for imposition of penalty and the original authority vide his impugned order confirmed the demand and also imposed penalty. On appeal against the said order, the Commissioner (Appeals) set aside the penalty. Hence the present appeal.

5. The Commissioner (Appeals) while disposing of the appeal observed as under: "Having carefully gone through the case I find that the appellant's cheque was returned after nearly three months period. There is no mention in the Show cause; notice or O-i-O that appellant did not have enough bank balance to get the cheque encashed. The appellants deposited the duty involved Rs. 30,000 vide TR 6 dated 3.3.98 and show cause notice was issued on 31.3.98. The show cause notice is void of any allegation inviting penalty equivalent to the duty involved. The appellants have furnished a copy of PLA for April 2001 whereunder an amount of Rs. 33648 (Personal Penalty Rs. 31000 + Service Charges Rs. 100 + Interest Rs. 2548) has been debited by the appellants. Under the circumstances, I do not feel the case attracts the provisions of Rule 173Q. Even if it was not proper for the appellants to deposit the duty through cheque, it does not prove that appellant had an intention to evade payment of duty. The recovery of interest is enough to meet the ends of justice." 6. Shri Radhir Singh, Id. JDR has drawn my attention to the Tribunal's decision in the case of *Leader Engg. Works v. CCE, Chandigarh*, 2004 (166) ELT 55 (Tri-Del.) whereunder the similar circumstances, penalty was imposed upon the appellants. My attention has also been drawn to another decision of the Tribunal in the case of *Hindustan Processors Ltd. & Novjot Jhanwar, Director*, 2004 (95) ECC 265 (Tri), wherein penalty was imposed under the provisions of Section 11AC.7. However, I find that the Larger Bench of the Tribunal in the case of *CCE v. Machino Montell (I) Ltd.*, 2004 (96) ECC 180 (LB-Tri) : 2004 (168) ELT 4.66 (LB-Tri) has held that where duties stand paid prior to the issuance of the show cause notice, the provisions of Section 11 AC for imposition of penalty are not attracted. As such, I am of the view that the goods referred decision, wherein the Larger Bench has not been considered, are not applicable to the present case. I do not find any merits in the Revenue's appeal

and the same is rejected.

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