Cce Vs. Champion Packaging (P) Ltd.

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SooperKanoon Citation : sooperkanoon.com/37152

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-19-2004

Judge : S Peeran

Appellant : Cce

Respondent : Champion Packaging (P) Ltd.

Judgement :

1. The short issue involved in this appeal is as to whether penalty equivalent to the sum of duty can be imposed for delayed payment of duty under Section 11AC of the CE Rules.

2. The learned Counsel points out to the findings given by the Commissioner (Appeals) wherein he has clearly recorded that duty was paid immediately after the issue of Show Cause Notice and in some cases before the issue of Show Cause Notices. Having recorded the said findings, he should have scaled down the penalty under Section 11AC in terms of the Apex Court judgment rendered in the case of State of Madhya Pradesh v. BHEL 1998 (99) ELT 33 wherein it has been held that penalty equal to the sum of duty prescribed is maximum and the authority has the discretion to levy lesser penalty depending upon the facts and circumstances of each case. Therefore, he seeks for reduction of the penalty imposed under Section 11AC of the Act.

3. The learned SDR reiterates the findings and submits that the Commissioner has already set aside the penalty in respect of duty paid prior to the issue of Show

Cause Notice but has confirmed the penalty with regard to the amounts paid after the issue of Show Cause Notice .

4. I have carefully considered the submissions and notice that the Commissioner has already accepted the explanation pertaining to the delayed payment. It is seen that the Show Cause Notice was issued on 27.03.2002 and the amount of Rs. 25,578/- was deposited on 24.4.2002, before the order was adjudicated. However, in terms of the Apex Court Judgment rendered in the case of State of Madhya Pradesh v. BHEL, the authority has got powers to levy lesser penalty depending upon the facts and circumstances of the case. The Commissioner has already accepted the reasonings given by the appellant for reducing the penalty. Therefore, in the facts and circumstances of the case, the penalty is reduced to Rs. 5,000/- and the appeal is allowed in the above terms with consequential relief, if any.