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Mool Chand Steels Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-2004

Reported in : (2005)(101)ECC362

Judge : S Kang, Vice, N T C.N.B.

Appellant : Mool Chand Steels Pvt. Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. The appellant filed this appeal against the adjudication order passed by the Commissioner of Central Excise whereby penalty is imposed, equal to the amount of duty, as the appellant paid duty with interest subsequent to the date of payment. The contention of the appellant is that duty alongwith interest has been paid, therefore, they are only asking for reduction of penalty. The appellant relied upon the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh v. Bharat Heavy Electricals, 1998 (99) ELT 33 and in the case of Ambuja Synthetics Mills Ltd. and Anr. v. Union of India and Ors., 2002 (50) RLT 133 and in the case of Beauty Dyers v. Union of India, 2004 (163) ELT 28. The contention is that Hon'ble High Court of Madras in the case of Beauty Dyers (supra) as well as in the case of Ambuja Synthetics Mills Ltd. & Anr. (supra) following the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh v.BHEL held that the penalty mentioned in the Act to be taken only a maximum and the assessing authority has the discretion to levy lesser amount of penalty depending upon the facts. The Revenue relied upon the

decision of the Hon'ble Allahabad High Court in the case of Pee Aar Steels (P) Ltd. v. CCE, Meerut, 2004 (93) ECC 633 where the Hon'ble High Court held that the Tribunal has been over indulgent to the assessee by reducing the penalty which is strictly speaking could not do so.

2. We find that in this case only issue is whether penalty imposed under the compounded levy scheme, for delayed payment of duty, shall be equal to the duty amount or there is a discretion with the Assessing Authority or the Appellate Authority to reduce the same. We find that the Hon'ble Supreme Court in the case of State of Madhya Pradesh v.BHEL (supra) held that under the Act, the assessing authority has the discretion to levy lesser amount depending upon the facts and circumstances of each case. This view was followed by the Hon'ble High Court of Gujarat in the case of Ambuja Synthetics Mills Ltd. & Anr.

(supra) and the Hon'ble High Court of Madras in the case of Beauty Dyers (supra). Hon'ble High Court held that the mandatory penalty provided under Rule 96ZO is the maximum penalty and the authorities have discretion to impose the lesser penalty. In view of the above discussion and respectively following the decision of the above Hon'ble Supreme Court in the case of State of Madhya Pradesh v. BHEL, the penalty is reduced to Rs. 50,000. The appeal is disposed of as indicated above.

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