

Cce Vs. Ruby Strips (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2004

Reported in : (2005)(98)ECC489

Judge : P Bajaj, M T K.C.

Appellant : Cce

Respondent : Ruby Strips (P) Ltd.

Judgement :

1. In this appeal, the Revenue has contested the validity of the impugned order vide which the Commissioner (Appeals) has quashed the penalty on the respondents, imposed under Rule 96-ZP(3) in toto.

2. Admittedly, the duty liability under the above said rule was not discharged by the respondents and they were served with a show cause notice for payment of the duty for the period April 1998 to June, 1998.

Duty earlier deposited by them was Rs. 2,77,755.

3. The respondents had later on deposited this duty, but the adjudicating authority still imposed the penalty equal to the amount of the duty. The learned Commissioner (Appeals) has quashed the entire penalty by referring to the ratio of the law laid down in the case of M/s Consolidated Coffee Ltd. v. Agricultural ITO, 218 ITR 417 and M/s Sadashiv Castings, 2004 (165) ELT 362 (Tri). But the ratio of the law laid down in none of these cases is attracted to the facts of the present

case. The imposition of penalty for non-payment of full duty in terms of Rule 96-ZP(3) in view of the law laid down by the High Court in the case of Pee Aar Steel Pvt. Ltd., 2004 (93) ECC 633 (All), is mandatory. Therefore, the entire penalty could not be quashed away by the learned Commissioner (Appeals). That being so, the impugned order of the Commissioner (Appeals) in this regard cannot be sustained and requires modification keeping in view the facts and circumstances of the case and the fact that the entire duty had already been paid by the respondents and that the validity of the Compound Levy Scheme itself remained under debate before the Apex Court, the penalty of Rs. 30,000 is imposed on the respondents. The appeal of the Revenue accordingly stands allowed.

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