

Jasch Plastic (India) Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2004

Reported in : (2005)(99)ECC230

Judge : A T V.K.

Appellant : Jasch Plastic (India)

Respondent : Cce

Judgement :

1. Shri R.P. Singh, learned Consultant, submitted that the entire duty of Rs. 70,653 confirmed against M/s. Jasch Plastic (India) has been deposited by them; that this fact is also mentioned in Order-in-Original; that the Appellants are also not contesting their duty liability. He, therefore, requested that the pre-deposit of penalty may be stayed. As the Appellants are not disputing the duty liability, after staying the recovery of entire amount of penalty, we take the appeal itself for disposal after hearing Shri R.P. Singh, learned Consultant, and Shri Bipin Verma, learned DR.2. In this matter the Appellants had taken Modvat Credit amounting to Rs. 70,653 in respect of delayed and bleached cloth. As the fabric was not found up to the mark they had returned the same to its supplier without reversing the Modvat Credit already taken by them in their books of account. The Dy. Commissioner, besides confirming the demand, has also imposed a penalty of an equivalent amount. It is the contention of the Appellants that the penalty should be imposed only when the Credit has been taken wrongly by reasons of fraud, mis-declaration, etc.; that there is no such allegation in the show cause notice and as

such no penalty is imposable. He has also contended that as the duty has been paid before the issue of show cause notice no penalty is imposable in view of the decision of the Larger Bench of the Tribunal in the case of CCE, Delhi-III, Gurgaon v. Machino Montell (I) Ltd., 3. It has not been disputed by the Appellants that they had taken the Modvat Credit of the inputs received by them which were, in fact, returned subsequently At the time of returning the inputs the Appellants have not reversed the Modvat Credit from statutory records.

Thus, in fact, they had taken the Modvat Credit without receiving the inputs which is illegal. It is also not the case of the Appellants that they have on their own reversed the Credit after coming to know of the wrong Credit taken by them. The officers visited the factory premises of the Appellants on 28.2.98. The penalty is imposable under the provisions of Rule 173Q of the Central Excise Rules, 1944 for taking the Modvat Credit wrongly. For imposing the penalty under Rule 173Q(1) no fraud or mis-declaration, etc. is required to be proved by the Department. It has been held by the Supreme Court in the case of Zunjarrao Bhikaji Nagarkar v. UOI, 1999 (112) ELT 772 (SC) that under Rule 173Q apart from the offending goods which are liable for confiscation the person concerned with that shall be liable to penalty up to the amount specified in the Rule. The Supreme Court has observed that "it is difficult to accept the argument of the Appellants that levy of penalty is discretionary, it is only the amount of penalty which is discretionary." Though the said judgment was referred to the Larger Bench it has not been distinguished in the decision of the Larger Bench relied upon by the learned Consultant. Further, it has been held by the Allahabad High Court in Pee Aar Steels (P) Ltd. v.CCE, 2004 (93) ECC 633 (All.) that penalty has nothing to do with the time of show cause notice. I, therefore, hold that penalty is imposable on the Appellants for taking the Modvat Credit wrongly. However, it is not a case for imposition of equal amount of penalty as the mistake was deducted (sic, detected) by the Central Excise Officers on the next day itself. I, therefore, reduce the amount of penalty to Rs. 10,000. The appeal is disposed of in the above terms.