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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-22-2004

Judge : N T C.N.B.

Appellant : A.P.S. Associate Pvt. Ltd.

Respondent : Cce

Judgement :

1. When the case came up for hearing today, none has appeared to represent the appellant. Therefore, I am disposing of the appeal after hearing the learned DR.2. Appellant is a manufacturer of iron and steel ingots, It took ineligible Modvat credit of about Rs.22,000/- in respect of 16 MT of scrap procured by it. The Central Excise Officers visited the appellant on 28.3.2001 and detected this irregularity. On the very next date, the appellant debited the credit wrongly taken alongwith a penalty of Rs.5504/-. i.e. 25% of the duty amount. However, when the case was adjudicated, the Deputy Commissioner, in addition to confirming the CENVAT credit amount imposed equal amount as penalty under Rule 173Q.Further, demand for interest was also made under Section 11AB. The appellant moved the Commissioner (Appeals) pleading that in view of payment of duty and penalty they should get the benefit of reduced penalty as contemplated under proviso to Section 11AC. That proviso reads as under:- "Provided that where such duty as determined under sub-section (2) of section 11A. and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of

penalty liable to be paid by such person under this section shall be twenty-five per cent of duty so determined.

3. The Commissioner rejected this claim on the ground that the assessee would be eligible for benefit of proviso only if, in addition to duty, interest also is paid. The appellant challenges that decision in the present appeal. It is clear from the facts narrated above that once the irregularity was pointed out, the appellant reversed the credit as well as paid the 25% of the credit as penalty even before the adjudication of the case. Further, the appellant has also paid the interest subsequently. In these circumstances, the appellant is entitled to the benefit of the above proviso. The appeal is allowed.

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