

Cce Vs. Kumar Rolling Division

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-2005

Reported in : (2005)(99)ECC757

Judge : A T V.K., P Bajaj

Appellant : Cce

Respondent : Kumar Rolling Division

Judgement :

1. In this appeal, the Revenue has contested the correctness of the impugned Order-in-Appeal vide which the Commissioner (Appeals) has set aside the penalty and interest under Rule 96-ZP(3)(i)(ii) of the Central Excise Rules as well as Rule 173-Q.2. None has come present on behalf of the respondents in spite of service of notice to them for today's hearing. Therefore, we proceed to decide the appeal after hearing the learned JDR.3. We have gone through the file and the impugned order- We find that the respondents during the relevant period were engaged in the manufacture of Hot Re-rolling Products and were liable to pay duty under Section 3A of the Central Excise Act under Compound Levy Scheme.

Their ACP was determined firstly provisionally by the competent authority, in respect of their two rolling mills vide orders dated 1.5.1998 and 19.8.1997. They were required to pay the duty in the beginning of each month from 1st September 1997 to 31st March 1998 or latest by 10th of each month. But they failed to pay the duty. Under these circumstances, the respondents evidently incurred the

liability for payment of interest and penalty under Rule 96-ZP(3)(i)(ii) of the Central Excise Rules. The imposition of penalty under the said Rule is mandatory, though the quantum of penalty is discretionary with the competent authority. Therefore, the Commissioner (Appeals) could not set aside the penalty in toto and drop the demand of interest also against them for the simple reason that they had paid the entire duty before the issuance of the show cause notice. Consequently, the impugned order of the Commissioner (Appeals), in this regard, cannot be sustained and deserves to be modified. We accordingly modify the impugned order and impose penalty of Rs. 25,000 on the respondents, and further direct them to pay the interest also, as per law.

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