Commissioner of Central Excise Vs. Varun Dyeing and Printing Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-15-2005

Judge : A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Varun Dyeing and Printing Mills

Judgement :

1. These two appeals one by the Revenue and other by the appellant in the form of cross-objections are taken up for disposal.

2. The Revenue's contention is that the Commissioner (Appeals) ought not to have reduced the penalty imposed on the respondents from Rs. 4,08,116/- to Rs. 81,600/-. The issue pertains to delay in payment of duty under Rule 96ZQ(5) (ii) by four days. The assessee paid the duty amounting to Rs. 4,08,116/- along with interest for the delayed payment. Invoking the provisions the above said rules read with Rule 173Q (1) of the Central Excise Rules, the lower authority imposed an equal amount of penalty. In appeal the Commissioner (Appeals) reduced it to Rs. 81,600/- the Revenue is aggrieved that the Commissioner (Appeals) has reduced the penalty in spite of the provisions of the above said rules where an equal amount of penalty is imposable.Commissioner of Central Excise v. GMP Finishing Mills have interpreted the provisions of Rule 96ZQ (3) of erstwhile Central Excise Rules to mean that it provides for maximum amount of penalty and the authorities below have discretion to impose lesser penalty depending on facts and circumstances of each case. In the present case the delay was only around four

days and the respondents not only paid the duty but also the interest payable.

Further it is noticed that in the case of Vimion Dyg. & Ptg. Mills Pvt.

Ltd. the Tribunal in its order No. A/108/WZB/2004/C-III dt. 12.4.2004 held that any pecuniary benefit accruing to the appellants by delayed payment has been neutralized by recovery of interest and reduced the penalty imposed in that case. In view of these decisions I do not find any infirmity in the order of the Commissioner (Appeals) who reduced the penalty imposed by the original authority. The appeal of Revenue has no merit and it is accordingly dismissed.

5. The appellant company's grouse is that even the penalty of Rs. 81,600/- ordered by the Commissioner (Appeal) is excessive in view of the fact that the appellant company has been discharging the duty liability under the said rules regularly without any default and in the present case there was a delay of only four days which occurred inspite of their best intentions. The Advocate for the appellant also pleaded that the interest on the delayed payment was also discharged by the appellants. In these circumstances no penalty should have been imposed at all. He pleaded that the order of the Commissioner (Appeals) should be set aside and complete relief from penalty should be recorded.

6. After hearing both sides I am of the opinion that in the facts and circumstances of this case a nominal penalty would meet the ends of justice. I therefore reduce the penalty to Rs. 5,000/- and modify the order of the Commissioner (Appeals) accordingly.

8. In fine the appeal of the Revenue is rejected and the appeal of the appellant company is partly allowed in above terms.