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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Mar-10-2005

Reported in : (2005)(188)ELT24Tri(Bang.)

Judge : S Peeran

Appellant : Elastic Enterprises

Respondent : Commissioner of Central Excise

Judgement :

1. Both these appeals raise a common question of law and facts and hence they are taken up together for final hearing after allowing the stay applications granting waiver of pre-deposit of penalty of Rs. 25,000/- each, confirmed by the Commissioner (Appeals) in the impugned order against both the appellants.

2. This is the second round of litigation. The Tribunal, by Final Order Nos. 1006 and 1007/2004, dated 1-6-2004 remanded the matter to the Commissioner (Appeals) for de novo consideration. The Tribunal gave a specific direction to consider the quantum of penalty on the appellants to be in par with the penalty of Rs. 1,000/- imposed on M/s. Bangalore Mono Filaments in terms of OIA No. 140/2000-C.E., dated 12-5-2000. The facts of all the three matters were common. The OIO pertaining to all the three parties were common wherein the penalty imposed on all the three parties mentioned above was Rs. 50,000/-. The Commissioner (Appeals) had reduced the penalty in respect of M/s. Bangalore Mono Filaments to Rs. 1,000/- while in respect of the appellants, he had reduced

the penalty to Rs. 25,000/- under the same facts of the case.

The Tribunal felt that the imposition of penalty is disproportionate and the matter was not in terms of law and, therefore, the matter was remanded to Commissioner (Appeals) to readjudicate and fix the same penalty as fixed in M/s. Bangalore Mono Filaments. The Revenue had accepted the penalty imposed on M/s, Bangalore Mono Filaments by OIA No. 140/2000-C.E., dated 12-5-2000 to an extent of Rs. 1,000/-. In the present matter, the Commissioner had enhanced the penalty on M/s.

Bangalore Mono Filaments to Rs. 25,000/- when there was no appeal pending before the Commissioner (Appeals) in respect of M/s. Bangalore Mono Filaments. The Commissioner (Appeals), in the impugned order, has held that as the penalty in respect of M/s. Bangalore Mono Filaments is being enhanced to Rs. 25,000/-, therefore, the penalty in respect of both the appellants is required to be enhanced to Rs. 25,000/-. This logic is attacked by the learned Counsel on the ground that the Revenue had accepted the appeal of M/s. Bangalore Mono Filaments and no appeal had been filed before CESTAT. Therefore, the Tribunal remanded the appellant's case to the Commissioner (Appeals) so that it can be brought to the notice of the Commissioner (Appeals) about the disparity adopted by the Commissioner (Appeals) in fixing the penalty in respect of these parties disproportionately without any rhyme or reason. The learned Counsel submits that the Commissioner has not understood the Tribunal's order and without any appeal against M/s. Bangalore Mono Filaments's order, he had enhanced the penalty to M/s. Bangalore Mono Filaments and has held that the penalty of both the appellants is required to be enhanced. The Commissioner (Appeals)'s order is, therefore, totally not as per law.

4. On a careful consideration, I notice that the OIA No. 140/2000-C.E., dated 12-5-2000 passed in respect of M/s. Bangalore Mono Filaments by Com missioner (Appeals) was not appealed by Revenue before the Tribunal. The penalty had been imposed under Rule 209 A of CE Rules on the allegation that the appellants had abetted in evasion of duty. It had been denied by the appellants. The Commissioner (Appeals)'s action of modifying OIA No. 140/2000-C.E., dated 12-5-

2000 is totally against law for the reasons already noted. This clearly shows total non-application of mind and lack of jurisdiction on the part of the Commissioner (Appeals) in modifying the OIA No. 140/2000-C.E., dated 12-5-2000 when there was no appeal or an order of remand on the said point by the Tribunal. The contention raised by the appellants in the present case about the enhancing of penalties in respect of M/s.

Bangalore Mono Filaments and keeping the penalty in respect of the appellants at par is totally not as per law. This sub mission is required to be accepted. The impugned order enhancing the penalty to Rs. 25,000/- is not in terms of law. The penalty in respect of both the appellants has to be fixed at Rs. 1,000/- only in terms of Order No.140/2000-C.E., dated 12-5-2000 passed by the Commissioner (Appeals) as in the case of M/s. Bangalore Mono Filaments. The impugned order is modified to the extent that the penalty in respect of both the appellants is reduced to Rs. 1,000/- each and the appeals are disposed of accordingly. At this stage, the learned Counsel submits that Rs. 10,000/- is under deposit and they should get back the refund of Rs. 9,000/- each in terms of this order. The said amount of Rs. 9,000/- shall be reimbursed to the appellants in terms of this order. Appeals allowed accordingly.

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