Commissioner of Central Excise Vs. Shahi Auto Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-06-2005

Reported in : (2005)(189)ELT220TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Shahi Auto Industries

Judgement :

2. Revenue filed this Rectification of Mistake application against the Tribunal Final Order No. 437/2004-NB(C), dated 31-5-2004.

3. The contention of the Revenue is that the Tribunal in the Final Order after taking into facts and circumstances of the case held that there is no allegation of suppression, mis-statement or suppression of facts with intent to evade duty and penalty imposed under Section 11AC of the Central Excise Act.

4. The contention of the Revenue is that in Para-8 of the show cause notice, it was specifically mentioned that the assessee did not got registered with the Revenue Department and also concealed the fact that motor vehicles were being manufactured by them and cleared without payment of Central Excise duty. The assessee neither applied for any registration nor filed any declaration showing manufacture of motor vehicle. The Revenue relying upon the decision of the Hon'ble Supreme Court in the case of B.P.L. India Ltd. v. Commissioner of Central

Excise, Cochin, Court to submit that in this case no CL return is filed by the manufacturer. It is a clear case of suppression with intend to evade duty.

5. Learned Counsel appearing on behalf of the assessee submitted that they are undertaking the job work of fabricating/mounting of body on chassis supplied by the manufacturer prior to January, 2001. The Chassis are being received under the Challan issued under Rule 57-F(4) of the Central Excise Rules and, thereafter, they were receiving the chassis under the cover of Invoices-cum-Challans and he was under the belief that the manufacturer of chassis is liable to pay duty. The contention is also that they have deposited the duty as demanded by the Revenue. In this case no penalty is imposable on the assessee. We find that in this case it is admitted by the appellants that they had not disclosed the facts to the Revenue as mentioned in Para-8 of the show cause notice and assessee has not disputed the payment of duty.

Therefore, in view of the decision of the Hon'ble Supreme Court in the case of B.P.L. India Ltd. v. Commissioner of Central Excise, Cochin (Supra), we find that there was an allegation of suppression of facts in the show cause notice. Hence the Rectification of Mistake application filed by the Revenue is allowed and after hearing both sides, we find no infirmity in the impugned order whereby the penalty under Section 11AC of the Central Excise Act can be imposed on the assessee. However, taking into facts and circumstances of the case, the penalty is reduced to Rs. 10, 000/- (Rupees Ten thousand only).