

Commissioner of Central Excise Vs. Ranbaxy Lab. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-01-2005

Reported in : (2005)(187)ELT337TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Ranbaxy Lab. Ltd.

Judgement :

1. In this appeal the revenue has sought the enhancement of the penalty and imposition of interest against the respondents, by modification of the impugned order vide which the Commissioner (Appeals) has imposed penalty of Rs. 5,000/- on account of wrongful availment of Modvat credit by the respondents of Rs. 1,15,525/- and dropped the demand of interest in toto.

2. I have heard both the sides. The representative appearing on behalf of the respondent has contended that since the duty was paid before the issuance of SCN neither penalty nor interest can be confirmed against the respondents. He has also referred to the Tribunal's judgment in the case of CCE, Lucknow v. Oudh Sugar Mills Ltd. 993. But in my view, his contention is not liable to be accepted. It is not a case of a short payment or non-payment of duty by the respondents falling under Section HA of the Act. It is a case where there had been wrongful availment of the Modvat credit and falls under the provisions of Rule 57-I. Admittedly, the respondents availed Modvat credit of the amount in dispute twice against the

same Bill of Entry dt. 30-5-2000. Mere reversal of the credit by them before the issuance of the SCN did not absolve them of the liability to pay penalty and interest under Rule 57-I as the said rule specifically provides the imposition of penalty equal to the amount of the credit wrongfully availed by the assessee and also the liability of the assessee to pay interest thereon. The provisions of this rule, if read as a whole, makes it quite clear that these are mandatory and no exception can be carved out thereunder. The provisions of Section 11A have got no application to a case falling under this Rule. Therefore, the ratio of law laid down in the case of Oudh Sugar Mills (supra) wherein penalty under Rule 173Q was imposed for wrongful availment of Cenvat credit, and the Tribunal quashed the penalty, has no application. Here imposition of penalty and demand of interest are governed by the provisions of Rule 57-I. Mere wrong citation of a relevant provision of the law in the SCN for demanding penalty and interest from the respondents, did not invalidate the SCN. The respondents knew all the facts and circumstances under which the penalty and interest was being sought from them. In the SCN no prejudice can be said to have been caused to them by mentioning Sections 11AC and 11AB instead of Rule 57-I in the SCN for imposition of penalty and demand of interest.

3. Keeping in view the amount of credit wrongly availed by the respondents, the penalty imposed on them by the Commissioner (Appeals) is too low and disproportionate. Accordingly, the same is raised/enhanced to Rs. 50,000/-. The demand of interest against the respondents is also confirmed. In other words, they are liable to pay interest also as per law. The impugned order accordingly stands modified. The appeal of the revenue stands disposed of.

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