

V.B. Information Systems Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-15-2005

Reported in : (2005)(102)ECC522

Judge : P Chacko

Appellant : V.B. Information Systems

Respondent : Cce

Judgement :

1.The appellants are manufactures of computer (sub-heading 8471.00 of the Schedule to the Central Excise Tariff Act). In March 1998, they removed 20 computers to certain customers without payment of duty, claiming exemption under Notification No. 10/97-CE. Other computers during this period were cleared to other customers on payment of duty.

The removal of the exempted computers was accompanied by availment of input duty credit. This was objected to by the department who wanted to recover from the party 8% of the sale price of the exempted computers under Rule 57 CC of the Central Excise Rules, 1944. A show-cause notice was issued for this purpose. Both lower authorities have upheld the proposal in the show-cause notice. The present appeal is against the demand under Rule 57 CC.2. After hearing both sides, I find that the only ground of this appeal is that the above demand cannot be enforced in the absence of recovery mechanism in the Central Excise law. Ld. Counsel has reiterated this ground. Ld. DR has dislodged this ground of the

appeal by pointing out that, for the period of dispute, there is a recovery mechanism under Rule 57 CC as retrospectively amended by the Finance Act, 2005 vide with Section 82 (1)(b) read with Sl. No. 2 under the Fourth Schedule.

3. After examining the relevant provisions of the Finance Act, 2005, cited by Id. DR, I find that an "explanation" has been added to Rule 57CC with retrospective effect so as to cover the period 1.3.1997 to 31.3.2000 providing for recovery of dues under the said Rule. The period of dispute in the instant case is comprised in the above period.

In the result, any dues under Rue 57 CC can be recovered from the appellants for the month of March, 1998 in terms of the "explanation" added to Rule 57 CC.3. Ld. Counsel has submitted that, in the above circumstances, any penalty is not justifiable. Before Finance Act, 2005 came into force, there was no statutory mechanism for recovery of Rule 57 CC dues and accordingly the appellants resisted the demand. Such mechanism has been introduced by the Finance Act, 2005, with retrospective effect. Thus it is by the operation of law that the dues adjudged by the lower authorities have become recoverable. In such circumstances, according to the Counsel, no penalty is imposable on the assessee. This argument has been contested by Id. DR. The Counsel's argument cannot be accepted inasmuch as Parliament while inserting the above "explanation" to Rule 57 CC, did not intend to exonerate the affected parties from penal liability. Irregular availment of Modvat credit is not in dispute in this case. Penal provisions covering irregular availment of Modvat credit were pre-existing in this case. Here there is no escape for the present assessee from penal liability. Thus the penalty will also stand affirmed.

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