C.C.E. Vs. Shiv Textile Printing Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-2005

Judge : P Bajaj

Appellant : C.C.E.

Respondent : Shiv Textile Printing Mills

Judgement :

1. In this appeal, the Revenue has contested the correctness of the part of the impugned Order vide which the Commissioner (Appeals) has reduced the penalty under Section 11AC and set aside the penalty under Rule 173Q.2. None is present for the respondents. I, therefore, proceed to decide the appeal after hearing the learned JDR. The perusal of the records shows that on 16.10.1998, one Maruti Van loaded with the processed man made fabrics manufactured by the respondents, was intercepted and the goods were not covered by the invoice. The goods were seized. The physical verification of the stock lying in the factory premises of the respondents was carried out by the officers and the shortage of the goods was found. The adjudicating authority confirmed duty demand in all of rupees 63,988/- with equal penalty under Section 11AC and imposed penalty of rupees 10,000/- under Rule 173Q. The Commissioner (Appeals) reduced the penalty under Section 11 AC to rupees 30,000/- and set aside the penalty under Rule 173Q, but for so doing he has not referred any sufficient ground. When there was a evasion of duty by the respondents by removal of goods in clandestine manner, the penalty equal to the amount of duty evaded, was required to be

imposed on the respondents. The reduction of penalty under Section 11 AC by the Commissioner (Appeals) is not justifiable and the same is restored to the amount equal to the duty amount. Similarly, without any sufficient cause, penalty under Rule 173 Q has been set aside by the Commissioner (Appeals) and his order in this regard cannot be sustained. The order of the original authority regarding imposition of penalty under Section 11 AC as well as under Rule 173Q, on the respondents, is restored.

In the light of discussion made above, the impugned order, accordingly, modified. The appeal of the Revenue is allowed.