Commissioner of Central Excise Vs. Hyundai Unitech Electrical

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SooperKanoon Citation : sooperkanoon.com/39917

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-05-2005

Judge : T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Hyundai Unitech Electrical

Judgement :

1. The Revenue in the present appeal is aggrieved by the impugned order dated 13.06.2003 passed by the Commissioner of Central Excise (Appeals), Nagpur, by which penalty of Rs. 2,00,000/- imposed by the Asst. Commissioner on the Respondents, has been reduced to Rs. 50,000/-.

2. The Respondents are engaged in the manufacture of Tower and Lattice Masts of Iron & Steel falling under Chapter 73 of the First Schedule of the Central Excise Tariff, 1985.

3. The Respondents were availing the facility of payment of duty of excise on fortnightly basis in terms of Rule 8(1) of the Central Excise Rules, 2001. Accordingly, in respect of clearance for the first fortnight, the duty was required to be paid by 20th of the month and for the clearances in the second fortnight, other than the month of March, the duty was required to be paid by the 5th of succeeding month.

4. For the period 16.12.2002 to 31.12.2002, the Respondents were facing acute shortage of funds. Out of total duty liability of Rs. 55,51,052/- for the aforesaid period, the Respondents debited Rs. 16,85,380/- to Cenvat account and balance Rs. 38,65,672/- was payable by 05.01.2003.

They have intimated about the shortage of funds by their letter dated 10.1.2003 and further informed that they would pay the unpaid amount with interest. However, they ended up paying the balance amount with interest by Demand Draft dated 04.02.2003 and same got cleared on 07.02.2003.

5. The respondents were issued a Notice, asking to show cause as to why the facility for duty payment through Cenvat should not be withdrawn for a period of two months? It was adjudicated by the Asst.

Commissioner, who ordered the withdrawal of the facility for payment of duty through Cenvat and imposed penalty of Rs. 2,00,000/- (Two Lakhs).

The Commissioner (Appeals) reduced the penalty to Rs. 5,000/- against which the present appeal is filed.

6. It is submitted by the assessee that the penal provision of Rule 8(4) attracts only in case where the assessee defaults in payment of any one instalment and the same is discharged beyond a period of thirty days from the date on which the instalment was due a financial year.

7. The undisputed facts in the present case is that the Respondents were liable to pay duty on 05.01.2003, which they paid along with interest vide Demand Draft dated 04.02.2003, which was cleared on 07.02.2003. In other words, the due instalment was discharged by the Respondents within thirty days. It is settled legal position that if the assessee deposits the duty by cheque/DD, the date of presentation of the cheque in the bank shall be deemed to be the date on which the duty has been paid as held in-Bilt Industrial Packaging Co. Ltd v. CCE- (T) 8. In the aforesaid circumstances, it can be said that the Commissioner (Appeals) was justified in reducing the penalty amount. Accordingly, appeal filed by the Department is hereby dismissed.