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New Era Enterprises Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-01-2005

Judge : M Ravindran

Appellant : New Era Enterprises

Respondent : Cce

Judgement :

1. The brief facts of the case are that the appellants are a SSI industry and are also doing the job work activity like cutting, painting etc of the transformer tanks. The audit team visited the appellants and during the course of the audit observed that the process carried out by the appellants would amount to manufacture and the appellants are liable to pay the duty. The appellants paid the duty as pointed out by the audit team in May 1997, July 1997 and August 1997. A show case notice was issued to the appellants for appropriation of the duty already paid and also for the imposition of the penalty. The adjudicating authority came to the conclusion that the duty paid before the issue of show cause notice is confirmed and appropriated and imposed a penalty of Rs. 2000/- on the appellants. The revenue preferred an appeal against the order in original and the Commissioner (Appeals), imposed a further penalty of Rs. 43,953/- on the appellants in addition to the penalty of Rs. 2000/-. Against the said order this appeal is preferred.

2. The learned advocate submits that since the duty has been paid almost three months before the issue of the Show Cause Notice the imposition of the penalty of the equal amount by the Commissioner (Appeals) is contrary to the settled law by

the larger bench of this Tribunal in the case of the Machino Montel. The learned Advocate also relies upon the case of the Shree Krishna Pipe Industries - (Kar) wherein in the identical situation the Hon'ble Karnataka High Court on reference of law, held that penalty and interest is not imposable, if duty has been paid before issue of show cause notice. The learned advocate does not challenge the imposition of the penalty of Rs. 2000/- on the appellants.

3. The learned DR on the other hand submits that the appellants were working under SRP and are liable to follow the provisions of the law strictly as duty is cast upon them to do so and that the Commissioner (Appeals) was correct in imposition of equivalent penalty on the appellants.

4. Perused the records. It is not disputed that the duty as pointed out by the audit team is paid by the appellants before the issue of the Show Cause Notice. I find that the appellants were doing the job work and they were receiving the inputs for doing the job work. The appellants have contested the Show Cause Notice on the ground that they were under Bona fide belief that the activity carried out by them would not amount to manufacture more so if they are working under job work procedure. I am of the opinion that the appellants being a SSI industry could have misunderstood the provisions. Further they have accepted their liability and discharged the duty liability before the issue of the show cause notice. The decision by the Larger Bench in the case of Machino Montel squarely covers the issue. Following the Larger Bench's decision I allow the appeal of the appellants against the imposition of the penalty by the Commissioner (Appeals), direct the appellants that the penalty of Rs. 2000/- as imposed by the adjudicating authority be paid, if not already paid. Appeals allowed to the extent stated above.

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