

Cce Vs. Inducto Cast.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-09-2005

Judge : S T T.V.

Appellant : Cce

Respondent : inducto Cast.

Judgement :

1. This is an appeal filed by the Revenue against the order of the Commissioner(appeals) who had reduced the quantum.

2. M/s. Inducto Cast, Respondents in this appeal are the manufacturers of C.I. casting, tractor parts etc, availing cenvat facility. Central Excise officers visited their premises on 28.4 2003 and detected certain anomalies. A SCN was issued on 29.7.2003 contemplating recovery of duty and imposition of penalty.

When the case came up for adjudication, the Assistant Commissioner confirmed/appropriated the duty (Rs. 1,26,554/-) already paid under Section 11A and imposed penalty of Rs. 50,000/- under Rule 25.

Being aggrieved, the respondents went in appeal. The Commissioner (A) observed that the appellants did not contest duty liability. Their only plea was on imposition of penalty of Rs. 50,000/-. Finding that the goods were removed under proper central excise invoices, the Commissioner (A) took a lenient view and brought down the penalty from Rs. 50,000/- to Rs. 1,000/-. Aggrieved by the said

order of the Commissioner (appeals), Revenue has filed this appeal. The main contention of the Revenue is that the respondents did not record the production and clearances for 16 days in daily stock register in respect of ten invoices involving substantial revenue of Rs. 1,26,554/- which clearly shows malafide intent on the part of the respondents.

3. The learned advocate informs that they are allowed to make payment of duty till 5th of the next month, though he admits that record of production and clearances have not been kept up to date. According to him, even if penalty has been imposed under Rule 226, the penalty cannot be more than Rs. 2,000/- and in this case, the Commissioner(appeals) has imposed a penalty of Rs. 1,000/-, which is quite reasonable.

4. The learned Joint CDR points out that under Rule 25, penalty cannot exceed the duty sought to be evaded or Rs. 10,000/- whichever is greater. Thus, there is a case for imposing atleast a minimum penalty of Rs. 10,000/- and the Commissioner (appeals) has thus erred by imposing penalty of Rs. 1,000/- only, which is not as per the provisions of the Rule.

5. The learned advocate argues that Rule 25 is not at all applicable in this case since no confiscation has been ordered. According to him, if there is no confiscation, erstwhile Rule 173Q or Rule 25 cannot be invoked. According to the learned Joint CDR, as the goods were not physically available for confiscation one cannot overlook the confiscable nature of the goods. Therefore, Rule 25 had been correctly invoked in the show cause notice.

6. I have examined the case record and heard both sides. I do not find anything wrong in invoking Rule 25 in the subject case, as the confiscable nature of the goods lingers on even though goods may not be physically available for proceedings. I also find that the Commissioner (appeals) while imposing penalty under Rule 25, has not taken into consideration the minimum penalty prescribed under the said rule. In view of this, I modify the order of the Commissioner (appeals) only to the extent that the amount of penalty of Rs. 1,000/- is enhanced to Rs. 10,000/- (Rupees Ten Thousand only).