

Commr. of C. Ex. Vs. Matsyodari Steel Alloys Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-03-2006

Judge : A T K.K.

Appellant : Commr. of C. Ex.

Respondent : Matsyodari Steel Alloys Pvt. Ltd.

Judgement :

1. In the present appeal the respondents have taken over the unit and given an undertaking that they will take over all the liability of the company taken over. A show cause notice issued to the earlier company was adjudicated by the Assistant Commissioner after the company was taken over by the present management. In his order, he has confirmed the demand of duty along with interest and a penalty of Rs. 1,50,000/- under Rule 96ZO(3) read with Rule 173Q. The Commissioner (Appeals) has set aside the penalty on the ground that the present management cannot be held liable for the irregularity committed by their predecessor relying on the Tribunal's decision in the case of Marcandy Prasad Radhakrishna Prasad Pvt. Ltd. v. CCE, Cal.-II , wherein it was held that "Penalty - Present management is not responsible for illegal activities carried out during time of previous management - Penalty not imposable - Rule 173Q of Central Excise Rules, 1944." The other ground on which the penalty has been set aside i.e.

order-in-original referred to Rule 173Q, which was invocable only in respect of contraventions of Rules under Chapter VIIA of the erstwhile Central Excise Rules, 1944 i.e. those relating to Self Removal Procedure.

2. None appeared for the respondents despite notice. There is also no request for adjournment.

3. The learned SDR submitted that the Tribunal's decision cited by the Commissioner (Appeals) has been wrongly quoted as the relevant para 5.3, read as under: Question would, however, remain whether the appellants would be liable to penalty under Rule 173Q. The adjudicating authority has not at all discussed the pleas regarding the previous management and the present management is not at all concerned. In the absence of any finding by the adjudicating authority, no case for penalty is made out under Rule 173Q read with any other Rule of the Central Excise Rules.

4. It was submitted that in this case, it was neither the involvement of present management or of the past management, which was looked into and, therefore on this ground the penalty was held on not imposable and not on the plea that the present management cannot be held responsible for illegal activity carried out during the time of previous management as cited by the Commissioner (Appeals). It was further submitted that the penalty was correctly invoked under Rule 96ZO(3) and mentioning of Rule 173Q will not make a difference.

5. I have considered the submissions made by the learned SDR and I find that finding of the Tribunal's decision has been wrongly quoted and the Commissioner (Appeals) has only gone by the head note and has not looked into the relevant para, which speaks otherwise. Further, the penalty has been clearly imposed under Rule 96ZO(3), which was also mentioned in the show cause notice separately and mere mentioning the provisions read with Rule 173Q will not be nullify the imposition of penalty.

6. I, accordingly, allow the appeal and set aside the impugned order passed by the Commissioner (Appeals) and restore the order-in-original.

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