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Vinod Kumar Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-09-2006

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Vinod Kumar

Respondent : Commissioner of C. Ex.

Judgement :

1. Applicant filed this application for waiver of pre-deposit of personal penalty of Rs. 5,000/-. Applicant is working as Deputy Manager (Operational) with M/s. Bharat Petroleum Corporation Limited. While confirming the demand on M/s. Bharat Petroleum Corporation Limited the penalty is imposed on the appellant. The appeal filed by the Bharat Petroleum Corporation Limited is still pending. In the impugned order there is no finding regarding commission or omission with intend to evade payment of duty against the appellant. Therefore, the pre-deposit of whole of the duty is waived and Stay petition is allowed. In the present appeal the applicants are only challenging the imposition of penalty of Rs. 5,000/-. Therefore, we are taking up this appeal for hearing. The penalty was imposed under Rule 26 of CENVAT Excise Rules.

We have gone through the impugned order and in the impugned order there is no mention of any commission or omission on the part of the appellant with intend to evade payment of duty. The adjudicating authority only held that present appellant is the employee of M/s.

Bharat Petroleum Corp. Ltd. and all policy decisions are taken by the management of the Company. Therefore, token penalty has been imposed.

As the present applicant is only Deputy Manager (Operational), and there is nothing on record to so of the applicant is concerned with policy decision of the Company. Therefore, the imposition of penalty is not sustainable hence set aside. Appeal is allowed.

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