

**Commissioner of C. Ex. Vs. Surendra Re-rollers Pvt. Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** May-08-2006

**Judge :** S T Chittaranjan

**Appellant :** Commissioner of C. Ex.

**Respondent :** Surendra Re-rollers Pvt. Ltd.

**Judgement :**

1. Heard both sides. The respondents defaulted payment of Compounded Levy amount for Rs. 1,68,650/- for the period 1-2-1999 to 31-3-1999 and Rs. 75,521/- for the period 10-8-1999 to 31-3-2000. The amounts have been ultimately paid after long delay on 1-7-2004. Shri S.K. Jawalkar, Accountant of the respondent company submits that no interest payment for the delayed payment has been made so far but submits that the same would be paid within 30 days from today. The lower appellate authority has set aside the penalty imposed on the respondents on the ground that the management of the company has changed and that no penalty is imposable on the new management of the company.

2. Shri S.K. Jawalkar, Accountant of the respondent company states that in the case of Bhomi Re-Rolls Pvt. Ltd. v. CCEx, Aurangabad Order No.A/489/W/SMC/WZB/06 dated 14-3-2006, the Tribunal has held that no penalty is imposable in compounded levy cases following the decision of the Tribunal in the case of Mitra Steel & Alloys Pvt. Ltd. v. CCE, Rnignd Order No. A/1444-1446/WZB/2005/C-III dated 12-8-2005 .

3. Shri N.V.B. Nair, learned JDR appearing for the department, states in reply that the Hon'ble High Court of Allahabad in the case of Pee Aar Steels (P) Ltd. v. CCE, Meemt has upheld the penalty provision under Rule 96ZP(3) and has further held that penalty under the said rule is not a maximum penalty but the only penalty and that such penalty is to be imposed equal to amount of duty outstanding in case of failure to pay duty by prescribed date. He further states that contrary decision of the Tribunal in Mitra Steel (cited supra) is not applicable in view of the aforesaid decision of the Hon'ble High Court in the case of Pee Aar Steels (cited supra).

4. After hearing both sides, I find that in the present case, there is a long delay in payment of the duty amount and that the same has been paid after five years in one case and after four years in the second case. The interest amount has also not been paid till date. As such, this appears to be a fit case for imposition of penalty equal to the duty amount as prescribed under Rule 96ZP(3). I am also of the view that the Tribunal's order in the case of Mitra Steel cited above holding that no penalty is imposable in compounded levy cases cannot be followed in the light of the cited decision of the Hon'ble High Court of Allahabad in the case of Pee Aar Steels (cited supra) holding that such penalty is imposable and that the Tribunal is not competent to reduce the penalty. Accordingly, I set aside the impugned order and restore the Order-in-Original in so far as it relates to the present respondents.

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