

Cce Vs. Ishwar Paper Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-13-2006

Reported in : (2006)(111)ECC231

Judge : M Ravindran

Appellant : Cce

Respondent : ishwar Paper Mills

Judgement :

1. This stay application is directed against order in appeal dated 28/03/2006 which set aside the penalties imposed on the respondents.

Since, the issue involved is squarely covered by the judgement of the Hon'ble High Court, the stay application filed by the revenue is dismissed and appeal itself taken for disposal.

2. The relevant fact that arise for consideration are that the respondent's factory was visited by the officers of the Central Excise and on the physical stock being verified, found shortage of some finished goods on which duty was paid by the respondent immediately. A show cause notice was issued on 12/02/04 to the respondents i.e.

subsequent to the debits of the duty involved. The adjudicating authority appropriated the amount of duty paid and also imposed penalty under Section 11AC of the Central Excise Act. On an appeal, the Commissioner (Appeals)

relying upon the decision of the Larger Bench of the Tribunal and also in the case of Rashtriya Ispat Nigam Ltd. v. Commissioner of Central Excise, Visakhapatnam as reported as set aside the penalty imposed on the respondent.

Hence, revenue is in appeal.

3. The learned DR submits that the fact of removal of goods clandestinely has been proved from the fact that the respondent have already deposited the amount involved in this case. It is his submission Sub-section 2B of Section 11A could come in play and the explanation to that sub-section will get attracted and the penalty is imposable on the respondent. The learned advocate for the respondents submits that the issue is squarely covered by the decision of the Hon'ble High Court of judicature at Bombay in the case of Central Excise - I v. Gaurav Mercantiles Ltd. .

4. Considered the submissions made by both sides and perused records.

It is not in dispute that the respondents have already deposited the entire amount of duty that was involved and the short found goods prior to the issuance of their show cause notice. I find that the Hon'ble High Court of judicature at Bombay in the case of Gaurav Mercantiles Ltd. has held as under: 3. The substantial questions of law sought to be raised are as under: (i) Whether the Tribunal is correct in interpreting Section 11A of Central Excise Act while holding that Duty demand on 19/4/2004, was not required to be made due to insertion of Section 2B to Section 11A on 11/05/2001 and that invoking the penalty clause of Section 11C is not called for? (ii) Whether Sub-clause (2B) of Section 11A is applicable considering the fact that the assessee indulged in clandestine removal. When the show cause notice contains detailed narration of events apparently leading to the conclusion of intention to evade payment of duty, whether mere non-invocation of specific section/provision to Section 11A will vitiate the show cause notice for purpose of imposition of penalty under Section 11AC of Central Excise Act, 1944? 4. Factual matrix reveals that the show cause notice was issued on 19/04/2002 whereas entire amount of duty and penalty was paid on 31/01/2001 and 01/09/2001. It is thus clear that the entire duty liability was paid prior to the issuance of show cause notice.

5. Learned Counsel appearing for the respondent-assessee tried to support the order of the Tribunal on the basis of two judgments; one of the Madras High Court in the case of CCE, Madras v. Jkon Engineering (P) Ltd. 2005 (67) RLT 157 (Mad.) and another from the Karnataka High Court in the case of Commissioner of C. Ex. Mangalore v. Shree Krishna Pipe Industries , wherein both the Courts have taken a view that where duty or penalty imposed has been deposited before issuance of show cause notice under Section 11AC of the Central Excise Act, 1944, no action under Section 11AC of the Central Excise Act should be initiated or taken.

6. It is also brought to our notice that a view similar to above view had also been taken by the Tribunal at Bangalore in the case of Rashtriya Ispat Nigam Ltd. v. Commissioner of Central Excise, Vishakhapatnam Tribunal at Bangalore was a subject matter of appeal before the Apex Court. Appeal has been dismissed by the Apex Court see 2004 (163) E.L.T. A53. In this view of the matter, it can safely be concluded that the view taken by the Tribunal was accepted by the Apex Court.

7. In the above circumstances, no substantial question of law is involved in this appeal. Appeal is thus dismissed for want of substantial question of law.

5. Accordingly, I find that the ratio of the decision of the judgement of the Hon'ble High Court squarely covers the issue which is being agitated by the revenue.

6. In the facts and circumstances, as mentioned above, I do not find any merits in the appeal filed by the revenue. Appeal is dismissed.

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