Avery Cycles Inds. Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-17-2007

Reported in : (2007)(116)ECC183

Judge : R Abichandani, N T C.N.B.

Appellant : Avery Cycles Inds. Ltd.

Respondent : C.C.E.

Judgement :

1. This appeal has come up for hearing by order of remand made by the Hon'ble High Court of Punjab & Haryana by setting aside the order of the Tribunal made on 24.6.04 only to the extent of reducing the penalty to Rs. 25,000/-. The case is remanded for a fresh decision on the question of penalty. While making the remand, the Hon'ble High Court observed that the only contention raised for the revenue was that the penalty of Rs. 25,000/- was imposed by the Tribunal though the penalty specified under the statute provision of Section 11AC of the Central Excise Act,44 had been interpreted by the Hon'ble High Court of Punjab & Haryana to mean minimum penalty in Commissioner of Central Excise, Delhi v. Illpea Paramount Pvt. Ltd. reported in 2006 (77) RLT. 118.

2. By the Order-in-Original dt. 15.11.03, the Commissioner had confirmed the demand of Rs. 6,71,829/- under Section 11A by invoking the provisions of extended period, disallowed the Modvat credit amounting to Rs. 27,038/-, ordered recovery of interest under Section 11AB of the Act read with the relevant rules,

and imposed penalty of Rs. 6,98,867/- under Section 11AC of the Act read with the relevant rules. The Tribunal noticing that the appellant had not challenged the confirmation of demand and disallowance of the Modvat credit and observing that they had paid up the appropriate duty when they deducted the amount, held that it is not a fit case for warranting imposition of 100% penalty. The penalty was, therefore, reduced from Rs. 6,98,867/- to Rs. 25,000/-. We, therefore, are required to reconsider the question of a penalty in the light of the decision in CCE, Delhi v. Illpea Paramount Pvt. Ltd. which interpreted the provision of Section 11AC as prescribing minimum penalty. In fact, under the impugned order, the Hon'ble High Court only referred the contention raised by the learned DR for the revenue in question in the said decision in Illpea Paramount Pvt. Ltd. and remanded the case for a fresh decision.

3. It has been contended on behalf of the appellant that the appellant had paid up the entire amount of duty and interest within 30 days of the passing of the order under Section 11A(2) of the Act. It was pointed out, without any dispute, that an amount of Rs. 6,98,867/- was already deposited during the pendency of the adjudicating proceedings which was adjusted while making the duty determination, and the remaining amount payable under the adjudication order, of Rs. 6,81,437/- on account of interest for delay in depositing the duty amount as well as the penalty of 25% of the amount confirmed as duty were deposited on 15.12.03 which was also within 30 days from the date of the communication of the order.

4. The learned authorized representative for the department on the other hand submitted that the proviso to Section 11AC contemplated the deposit being made after the determination of duty under Section 11A(2) and therefore the amount earlier paid during the pendency of the proceedings (Rs. 6,98,867/- cannot be considered to be payment of duty as determined by the order which was made subsequently on 15.11.03. It was also submitted that minimum penalty was required to be upheld in view of the decision of the Punjab & Haryana High Court in the case of Illpea Paramount Pvt. Ltd. (supra) and CCE, Delhi v. Machino Montell (I) Ltd. clear from the order of remand that the Hon'ble High Court has not given a direction that minimum penalty alone should be imposed. In the present case, the undisputed facts disclose that the appellant had deposited the entire

amount of duty and the interest payable thereon within 30 days from the date of the communication of the order of adjudication. From the letter dated 17.12.03 addressed by the appellant to the Dy. Commissioner, it transpires that the appellant had informed the Dy. Commissioner that as mentioned in the order of the adjudication itself, the amount of Rs. 6,98,867/- had already been deposited. It was also stated that the appellant had deposited a sum of Rs. 6,81,437/- on account of interest for a delayed deposit and an amount of equal to 25% of the amount confirmed as duty. Interest, and penalty equal to 25% of duty were deposited as per the copy of TR-6 Challan which was enclosed alongwith the said communication. It was finally submitted that since the entire amount has been deposited including penalty as reduced by the provisions of Section 11AC, no recovery was due from the appellant.

5. The contention raised on behalf of the revenue that an earlier deposit of Rs. 6,98,867/- cannot be considered to be a deposit made within 30 days of the order of adjudication is misconceived for the simple reason that though the amount was earlier deposited when the adjudication order determining the duty was made, it was ordered to be adjusted and therefore, it should be treated as a payment made within 30 days from the date of the commencement of the order. As regards the rest of the amount payable under the impugned order, the communication dated 17.12.03 and the copy of the TR-6 challan disclose that the entire duty as determined and interest payable duty were paid within 30 days of the communication of the adjudication order.

6. In the context of the above facts, the first proviso to Section 11AC of the said Act is reproduced below: Provided that where such duty as determined under Sub-section (2) of Section 11A, and the interest payable thereon under Section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section be twenty five percent of the duty so determined.

6.1 The first proviso to Section 11AC contemplates the penalty liability to be only of 25% of the duty determined in place of penalty equal to the duty determined. Therefore, in cases where the amounts are paid in accordance with the first

proviso, there can arise no question of imposing penalty equal to the duty determined. That requirement stands substituted by the requirement of paying the penalty of 25% of the duty determined. The cases in which payments are made within 30 days as contemplated under the first proviso are treated differently in the matter of imposition of penalty by reducing the quantum of penalty to only 25% of the duty determined. The lenient treatment by such reduced liability to penalty is obviously adopted with a view to encourage quick payment of duty and interest amounts determined by the adjudicating authority.

7. For the foregoing reasons, the ratio of the decision in Illpea Paramount Pvt. Ltd. (supra) in which the first proviso to Section 11AC was never under consideration, can have no application. Even the decision of the Punjab & Haryana High Court in Machino Montell (I) Ltd. will have no application, since the facts in the present case merit reduced penalty under the first proviso to Section 11AC were never involved in that matter. It will be noted even under the second proviso to Section 11AC, it is clarified that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso which was admittedly done in the present case.

Therefore, the penalty amount already paid up by the appellant being 25% of the duty determined alongwith all the other amounts within the period of 30 days warranted no further penalty on the appellant, as the question of penalty equal to the amount of duty cannot arise in such cases.

8. When the impugned order was made, the adjudicating authority could not have known that the payment would be made within 30 days by the assessee for claiming the benefit of the first and second provisos to Section 11AC. However, since after the making of the order, the appellant has in this case availed the benefit of first and second provisos to Section 11AC, the liability to pay penalty under the impugned order stands fully satisfied. The appeal is accordingly disposed of.