

Commissioner of Customs Vs. Jyoti Structures Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-29-2007

Judge : V T M.

Appellant : Commissioner of Customs

Respondent : Jyoti Structures Ltd.

Judgement :

1. This is a Departmental appeal against order of the Commissioner (Appeals) No. CEX.XI/AKD/151/NSK/APL/05 dated 14-10-2005 by which Commissioner (Appeals) has upheld the penalty of Rs. 1000/- imposed under Section 76 of the Finance Act, 1944 (sic) (1994).
2. Heard the learned DR. None appeared for the Respondents. Perused the records.
3. The learned DR submits that in this case there is a delay of 160 days in payment of Service tax and therefore the penalty under Section 76 would be minimum of Rs. 16,000/- to a maximum of Rs. 32,000/-. The imposition of penalty of Rs. 1000/- which was confirmed by the Commissioner is simply in violation of mandatory minimum penalty of Rs. 100/- per day under Section 76, as held in the case of ETA Engineering Ltd. v. CCE, Chennai reported in 2006 (3) S.T.R. 429 (Tri-LB) : 2004 (174) E.L.T. 19 (T.-LB).

4. I find the submissions of the learned DR convincing and therefore set aside the order of the original authority and Commissioner (Appeals) in so far as it relates to penalty imposed under Section 76 of the Finance Act, 1944 (sic) (1994) with the direction that the Original authority should decide the penalty afresh after giving an opportunity of hearing to the respondents.

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