Cce Vs. Vikas Trading Company

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-2007

Reported in : (2007)(118)ECC126

Judge : S Kang, Vice

Appellant : Cce

Respondent : Vikas Trading Company

Judgement :

1. Heard both sides. The revenue filed this appeal against the impugned order whereby penalty imposed under Section 11-AC was set aside. The contention of revenue is that appellant had wrongly availed the benefit of small scale exemption, therefore, they are liable to penalty under Section 11-AC of Central Excise Act.

2. The brief facts of the case are that the appellants are working under the small scale exemption notification. For the year 2002-2003, the appellant had shown the value of clearances as Rs. 2,97,75,485/-.

As per the revenue, the appellant had not included the value of clearance of Rs. 5,81,732/- which was subsequently returned by the customers. On this ground, the revenue is of the opinion that for the subsequent year, i.e. 2003-2004, the appellants are not eligible for small scale exemption notification as the clearance for the previous year were more than Rs. 3 crores.

3. The appellants paid the duty immediately before issuance of show cause notice. Thereafter, show cause notice was issued for confirming the demand and imposition of penalty. The adjudicating authority confirmed the demand and imposed penalty under Section 11AC of Central Excise Act. The appellants filed appeal and the Commissioner (Appeals) set aside the penalty imposed under Section 11AC. The revenue filed this appeal challenging the impugned order on the ground that as the appellant has wrongly availed the benefit of small scale exemption notification, they are liable for penalty under Section 11AC of the Act.

4. The contention of respondents is that as per the provisions of Section 11AC of the Central Excise Act, the penalty can be imposed where the duty of excise has not been levied or paid by reason of fraud, collusion or willful statement of suppression of facts. The contention is that there is no allegation in the show cause notice that appellants had suppressed any facts with intend to evade payment of duty. The respondents filed necessary declaration claiming the benefit of small scale exemption notification in the beginning of the financial year. The respondents also filed necessary quarterly return. As the appellant has disclosed to the revenue that they were availing the benefit of small scale exemption notification, therefore, allegation of suppression or misrepresentation is not sustainable. Hence respondents are not liable for penalty under Section 11AC of the Act.

5. In this case, the revenue wants to impose Section 11AC of Central Excise Act on the respondent. As per the provisions of Section 11AC, the same are applicable in case of fraud, collusion, suppression of facts with intent to evade payment of duty. In the present case, as the respondents filed necessary declaration at the beginning of the financial year for claiming exemption under notification and also filed necessary returns by showing that they were availing the benefit of notification, hence, no suppression with intent to evade duty on the part of respondents. Therefore, I find no infirmity in the impugned order whereby penalty imposed under Section 11AC is set aside. The appeal is dismissed.