

The Best Undertaking Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-29-2007

Reported in : (2007)(118)ECC318

Judge : A Wadhwa, V T M.

Appellant : The Best Undertaking

Respondent : Commissioner of Central Excise

Judgement :

1. The dispute in the present appeal relates to imposition of personal penalty of Rs. 4,60,000/- (Rupees four lakhs sixty thousand only) imposed on the appellant and confirmation of interest. The appellant is a undertaking owned, controlled and managed by and constituted under Mumbai Municipal Corporation Act, 1988. They are engaged in the manufacture of nuts and bolts bus Washing Machine, buses trolleys etc.

in their Dadar workshop. The said manufactured goods are not sold by them but used for the maintenance of the buses being run by the Municipal Corporation. The dispute relates to the excisability of the said goods resulting in confirmation of demand of duty of Rs. 48,28,550/- (Rupees forty eight lakhs twenty eight thousand five hundred fifty only) for the period 1996-2000. The appellant have deposited the said duty demand before the issuance of the show cause notice and hence it is their contention that imposition of penalty or confirmation of interest under the provisions of Section 11AC and Section 11AB is not warranted.

2. Shri R. Rustomji, Ld. Advocate appearing before us has relied upon the various decisions of the Tribunal in support of his submission that where duty stands deposited before the issuance of the show cause notice, provisions of Section 11AC and 11AB are not attracted. On the other hand, the Ld. DR as relied upon Madhya Pradesh High Court decision in the case of Sai Machine Tools Pvt. Ltd. v. Commissioner of Central Excise and Customs, Indore 3. Before applying the ratio of the decisions relied upon by the Ld.

Advocate appearing for the appellant, we would like to recapitulate certain facts having a bearing on the issue of penalty. Admittedly, appellant is a local authority constituted under Mumbai Municipal Corporation Act, 1988, and as such is a "State" under Article 12 of the Constitution of India. As such, there could be no motive on their part to evade duty with an intention to defraud the Government. Further as contended by them, there could be a reasonable belief on their part to interpret the view that being a "State" and manufacturing goods for their own captive consumption, no duty is required to be paid by them, though the Commissioner in his impugned order has observed that the appellant was a declarant and was paying duty for some period in between. Nevertheless, no mala fide can be attributed to the appellant.

It is further seen that the appellant deposited the entire amount of duty even before the issuance of the show cause notice.

4. In the light of the above facts Ld. Advocate has contended that in accordance with the Larger Bench decision of the Tribunal in the case of Machino Montel (India) Ltd. penalty and confirmation of interest has to be set aside. On being pointed out that the said decision stands reversed by the Hon'ble Punjab and Haryana High Court as reported in [], Ld. Advocate submitted that the same view stands decided by the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise v. Gaurav Mercantiles Ltd. . It is well settled law that in case of conflict between two High Courts, the view of the High Court having jurisdiction over the assessee has to be applied. For the above preposition reliance has been placed upon Tribunal decision in the case of Madura Coats v. Collector of Central Excise, Bangalore and Products v. Commissioner of Central Excise, Kanpur 2004

(178) E.L.T.618 (Tri. Del.). Ratio of all the decisions is that judicial discipline requires the Tribunal to follow the decision of the Jurisdictional High Court when views of other High Court are conflicting. Inasmuch as, the appellant is within the jurisdiction of Hon'ble Bombay High Court, we proposed to apply the ratio of the decision in the case of Gaurav Mercantiles Ltd. We also note that in the case of Commissioner of Central Excise v. Shree Krishna Pipe Industries , the Hon'ble High Court has observed that the disputed duty having been paid by the party even before the issuance of show cause notice, would show that there is no question of any fraud, misrepresentation or suppression of facts, thus justifying non imposition or penalty. Reliance was placed upon the Tribunal's decision in the case of Rashtriya Ispat Nigam Ltd. 2003 (54) RLT 317 and dismissal of appeal their against by the Hon'ble Supreme Court, as reported in 2004 (163) ELT A53 (S.C.).

5. In view of our observations made earlier that there was no mala Fide on the part of the appellant and the entire duty having been deposited by them even before the issuance of the show cause notice, we are of the view that imposition of penalty and confirmation of interest against the appellant is not warranted. The same is accordingly set aside the appeal is allowed in above terms.

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