Cce Vs. Barkat Dyeing Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-2007

Reported in : (2007)(118)ECC493

Judge : S Kang, Vice

Appellant : Cce

Respondent : Barkat Dyeing Works

Judgement :

1. Heard ld. SDR. The respondent made a request to decide the appeal on merit.

2. The Revenue filed this appeal against the impugned order whereby penalty imposed on the respondent was set aside on the ground that duty paid even prior to show-cause notice.

3. The contention of the Revenue is that the Commissioner (Appeals) relied upon the decision of the Tribunal in the case of CCE v. Machino Montell (I) Ltd. which has already been set aside by Hon'ble Punjab & Haryana High Court. The finding of the adjudicating authority is that the respondents clandestinely removed the goods without payment of duty, therefore, the respondents are liable for penalty. The respondents in their written submissions relied upon the decision of Hon'ble Delhi High Court in the case of CCE v. Malbro Appliances Pvt.

Ltd. 4. In this case, as the respondent suppressed the fact regarding clearance of goods without payment of duty therefore, are liable for penalty. The Hon'ble Delhi

High Court in the case of Malbro Appliances (supra) upheld the order passed by the Tribunal whereby penalty equal to 25% of demand was upheld by the Tribunal. The Hon'ble High Court after taking into consideration first proviso to Section 11AC of Central Excise Act held that where the duty demanded is paid within 30 days of the date of the adjudication order, the amount of penalty that may be imposed upon the notice should be 25% of the duty so determined.

In view of the above decision of the Hon'ble Delhi High Court, the respondents are liable to pay penalty equal to 25% of the demand. The appeal is allowed as indicated above.