

Cce Vs. C.L. Engineering Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-2007

Judge : R Abichandani

Appellant : Cce

Respondent : C.L. Engineering Ltd.

Judgement :

1. The Revenue has appealed against the order dated 13th May, 2005 passed by the Commissioner (Appeals) setting-aside the penalty of Rs. 3,49,292/-, which was imposed by the adjudicating authority with an option to the noticee to deposit 25% of the penalty amount under the first proviso to Section 11-AC of the Central Excise Act, 1944, subject to the payment of all pending dues within one month.
2. Admittedly, all the dues including penalty at 25% of the duty determined was deposited by the respondent. Still, however, the respondent had preferred an appeal in which it was contended that, they had deposited the full amount of credit involved before the issuance of the show cause notice and, therefore, no show cause notice was required to be issued to them in view of Sub-section 2(B) of Section 11-A of the act.
3. It is clear from the material on record that, the Cenvat Credit was not voluntarily reversed, but it was only when the factory premises of the noticee was raided on 14.08.2006 and physical verification was done, during which the breaches were detected, that the Cenvat Credit was reversed.

4. The learned Commissioner instead of examining the case of the respondent on the question of applicability of Sub-section 2(B) of Section 11-A, proceeded to set-aside even the penalty of 25% which was the statutory minimum, when the duty determined, interest and 25% of the duty determined are paid up within 30 days, as required by the first proviso to Section 11-AC of the Act. The Commissioner (Appeals) placed reliance on the decision of the Larger Bench of this Tribunal in the case of Commissioner of Central Excise, Delhi-III v. Machino Montell (I) Ltd. . The said decision of the Larger Bench was reversed by the Hon'ble High Court of Punjab & Haryana in the case of Commissioner of Central Excise, Delhi-III v. Machino Montell (I) Ltd. , in which the Hon'ble High held in para 7 of the judgment that, once a case is covered by the situation mentioned in Section 11-AC, mere deposit prior to issuance of show cause notice under Section 11-A of the Act will not unnecessarily negate the situation mentioned in that provision. Further more, as held by the Larger Bench of this Tribunal in the case of CCE, Delhi-IV v. Ilpea Paramount Pvt. Ltd., decided on 01.06.2007 (Excise Appeal No. 1060 of 2004), once it is held that imposition of penalty under Section 11-AC of the Act is warranted, the wordings of Section 11-AC do not leave any option for imposing a reduced penalty, except as specifically provided for in the amended provisions of Section 11-AC. Under the first proviso to the amended provisions of Section 11-AC, it is only when the duty is paid, along with interest and penalty, as determined, within thirty days, that the person concern will be entitled to the benefit of paying penalty at the rate of 25% of the duty determined. The respondent was given an option to pay 25% of the penalty within thirty days by the adjudicating authority. He paid up duty as well as the said penalty amount during the said period. There was, therefore, absolutely no valid reason for the Commissioner (Appeals) to set aside the penalty imposed on the respondent No. 2. The impugned order cannot, therefore, be sustained and is hereby set aside.

(Dictated and pronounced in the open Court on the 24th day of July, 2007)

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