Commissioner of Central Excise Vs. N.R.B. Bearings Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-27-2007

Reported in : (2008)(127)ECC150

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : N.R.B. Bearings Ltd.

Judgement :

1. This appeal is directed against the Order-in-Appeal No. AKD(17)218 & 219/2007 dt. 24.01.2007.

2. Considered the submissions made by both sides and perused the records. It is the contention of the Revenue that the Ld. Commissioner (Appeals) should not be set aside the penalty imposed and the interest sought to be charged from the respondent. It is the submission that the respondent having discharged the duty liability towards the ineligible availment of cenvat credit and no being contested by them, the interest and penalty is liable to be imposed. The Ld. Counsel appearing on behalf of the respondents submits that they are not challenging the amount of the duty reversed by them, it is submitted that amount has been paid before the issuance of the show cause notice and the show cause notice does not allege suppression of facts or fraud on the part of the respondent. Hence it is the submission that the order of Ld.

Commissioner (Appeals) setting aside the penalty is correct.

3. On perusal of the case records it is seen that the Commissioner (Appeals) has come to the conclusion that the respondent had debited the amount of the ineligible credit availed by them on their own, on being pointed out by the revenue. It is also on record that there is no allegation as to suppression, or fraud to invoke provisions of Section 11AC of Central Excise Act, 1944. If that be so, the entire amount of the credit is paid by the appellant before issuance of show cause notice, needs to be viewed leniently.

4. The imposition of penalty and interest on such amounts seems to be unwarranted due to absence of allegations for invoking provisions of Section 11AC of CEA. I find that the Ld. Commissioner (Appeals) has correctly set aside the penalty and interest on the respondent and impugned order does not require any interference. The Hon'ble High Court of Bombay in the case of Commissioner of Central Excise v. Gaurav Mercantiles Ltd has held, once the amount of duty has been paid before the issuance of the show cause notice, there is no question of imposition of any interest and penalty.