

Cce Vs. Cony Engineering

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Dec-11-2007

Judge : V T M.

Appellant : Cce

Respondent : Cony Engineering

Judgement :

1. These 2 appeals by the department arise out of same order-in-original No. 03/Joint Commissioner/2005 dated 28.9.2005. Cross objection No. 57/07 is connected to appeal No. E/369/06.

2. None appeared for the respondent. Heard the learned SDR. The relevant facts, in brief, are as follows: i) The respondent was manufacturing Worm Reduction Gear Box bearing brand name "CETRON" owned by M/s. Cetron Transmission Co. The original authority held that the clearances with the brand name of "CETRON" was not eligible for small scale exemption and confirmed the duty demand of Rs. 5,19,848/-; he also demanded interest under Section 11AB; he confiscated the offending goods but allowed redemption on payment of fine; he imposed penalty of Rs. 2.5 lakhs on the respondent firm under Section 11AC, read with Rule 25; he also imposed personal penalty of Rs. 2.5 lakhs on the proprietor of the respondent firm.

ii) The party went in appeal against the order of the original authority and the Commissioner (Appeals) vide his order dated 26.6.2006 confirmed the duty

demand, upheld the redemption fine imposed, however, set aside the demand of interest and imposition of penalty. Against this order dated 26-6-2006 the department filed appeal no 2963/2006.

iii) A few months after the order of the Commissioner (Appeals) dated 26.6.2006 the department filed an appeal, on 14.9.2006, against the very same order of the original authority dated 25.9.2005 seeking enhancement of the penalty to Rs. 5,19,848/- and seeking restoration of order-in-original in so far as it related to the order for recovery of interest. The Commissioner (Appeals) vide his order dated 28.9.2006 rejected the appeal of the department on the ground that before they filed the appeal, the party's appeal against the very same order stood decided by him, and therefore, there is no order of the original authority surviving and enabling the department to file any appeal.

iv) Against the above order dated 28.9.96 the department has filed appeal no E/369/06. The cross objection filed in connection with appeal No. 369/06 is basically in support of the order of the Commissioner (Appeals).

3. I have carefully considered the submissions. Learned SDR concedes that the appeal has been filed by the department on 14-9-2006 against order of the original authority only after the order of the Commissioner (Appeals) dated 26.6.2006. The Commissioner (Appeals) held that the department's appeal seeking enhancement of the penalty to an amount equal to the duty evaded and restoration of the original order regarding recovery of interest cannot be entertained. This view is legally correct. Without going into the merits of the appeal by the department, appeal No. E/369 is rejected on this limited ground. The connected cross objection is also disposed of accordingly.

4. Coming to appeal No. E/2963/06, it is noticed that after taking note of the fact that the entire duty involved has been paid before the issue of show cause notice the Commissioner (Appeals) relying upon the decision of the Tribunal in the case of Machino Montell (I) Ltd. reported at 2004 (168) ELT 466 set aside the entire penalty, and also set aside the order for recovery of interest. The learned SDR submits that the said decision of the Tribunal has been reversed by the Hon'ble High Court of Punjab & High Court as reported in 2006 (202) ELT 398 (P&H).

5. In the light of this the order of the Commissioner (Appeals) in so far as setting aside the penalty and setting aside the order of the interest is erroneous and to that extent requires modification. The Appeal No. 2963/06 is partly allowed as indicated below. The order of the original authority in so far as it relates to the recovery of interest is restored. While restoring the penalty imposed by the original authority the same is reduced to Rs. 1,29,962/-.

6. Appeal No. E/ 369 is rejected. Cross objection No. 57/07 is disposed of. The appeal No. E/2963/06 filed by the department is allowed to the above extent.

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