

Commissioner of Central Excise Vs. Ajanta Universal Fabrics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-20-2007

Reported in : (2008)(126)ECC261

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Ajanta Universal Fabrics Ltd.

Judgement :

1. This appeal is filed by the revenue against the order in appeal No.P-II/BKS/31/2007 dated 9.3.2007 which has set aside the penalty imposed on the respondent.

2. Considered the submissions made by both sides and perused the records. The Commissioner (Appeals) while setting aside the penalty imposed under Section 11AC of the Central Excise Act, 1944 held as under: The appellants in their submissions have stated that these case laws are not applicable as in the present case the appellants have themselves paid the duty and not on detection by the department.

There is sufficient force in the stand taken by the appellants. It appears that the appellants had written a letter dated 12.6.2004 to the Assistant Commissioner, Satara Division informing him that they had debited the amounts in June 2004 on their own. The adjudicating authority in the Order-in-Original has stated that the

appellants debited the amount on pointing out by the Superintendent. However there is no evidence adduced by the department to show that the same was ever pointed out by any officer by the department. Further there is no such mention at all in the SCN dated 14.12.2004. Thus the appellants contention is correct that they had paid the amounts on their own. The decisions relied upon by the department are therefore not applicable to the present case as the facts are different. Thus there is no merit in the stand of the department. The penalty of Rs. 4,09,969/- under Section 11AC of the Central Excise Act, 1944 is therefore, not sustainable.

3. The fact that the respondent has themselves reversed the entire amount of duty which has been taken wrongly, is not disputed. At the same time, it is also the submission of the Id. counsel that during the relevant period they had enough credit balance in the basic excise duty in statutory books which they could have utilized for the discharge of duty liability under the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 is not disputed anywhere by the revenue.

Grounds of appeal of the revenue mention that confirmation of demand of duty and setting aside penalty under Section 11AC is not correct.

4. After hearing both sides and on careful perusal of the records I find that provisions of Section 11AC may not get attracted to this case as there is no element (of) intention to evade payment of duty. As such the decision of Hon'ble High Court of Bombay in the case of the Gaurav Mercantiles Ltd. would apply squarely to the present case. Accordingly the impugned order is correct and does not require any interference. The appeal filed by the revenue is rejected.

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