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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Jan-10-2008

Reported in : (2008)(126)ECC146

Judge : A Wadhwa, V T M.

Appellant : Saurashtra Cement Ltd.

Respondent : Cce

Advocate for Pet/Ap. : Shri. S.R. Dixit

Judgement :

1. The challenge in all the four appeals is to penalties of Rs. 1 lakh, Rs. 1 lakh, Rs. 75 lakhs and Rs. 50 lakhs imposed by the original Adjudicating Authority in terms of the provisions of Rule 25 of Central Excise Rules, 2002 on the ground of the delay in discharging duty liabilities by the appellant during the period July, 2004 to March, 2005, and upheld by Commissioner (Appeals).

2. After hearing both the sides, we note that the appellant are engaged in the manufacture of Cement clinker and Cement falling under Chapter 25 of the Central Excise Tariff Act, 1985. During the period in question, though the appellant was maintaining the requisite statutory records as regards the manufacture of the said goods and were clearing the goods on Central Excise invoices, the duty was not being paid by them by the 5th of the next month in terms of the provisions of Rule 8 of the Central Excise Rules, 2002. However, such duties were paid by them

subsequently along with interest. As such, there was delay ranging from 25 to 65 days in depositing duties. For such delayed payment of duties, proceedings were initiated against them for imposition of penalties in terms of Rule 25 of the Central Excise Rules, 2002, which resulted in passing of the impugned orders. Hence, the present appeal.

3. Ld. Advocate Shri S.R. Dixit appearing for the appellant fairly concedes the delay in depositing the duties but submits that the same has occurred on account of the financial crunch and delay in the receipt of payments from their customers. In any case, submits the ld.Advocate that the appellant stands sufficiently penalized for their action in not depositing the duties in time, by way of interest. As such, further imposition of penalties was not justified. In any case submits the ld. Advocate that Rule 25, which provides for imposition of penalties in such cases is not attracted, as held by the Tribunal in a number of decisions and a general penalty can be imposed in terms of Rule 27, which provides maximum penalty of Rs. 5000/- only.

4. Countering the arguments, ld. DR reiterates the findings of the lower authorities and specifically draws our attention to the observations made by Commissioner (Appeals) that the appellant is a habitual offender in depositing duties late and as such high imposition of penalty is justified.

5. We find that Rule 25 of Central Excise Rules, 2002 provides for imposition of penalties which shall not exceed the duty on the excisable goods, when there is contravention of the nature referred to in Clause (a), Clause (b), Clause (c) or Clause (d). We find that Clause (a) of Rule 25 refers to removal of excisable goods in contravention of any of the provisions of the rules. Admittedly when the goods were removed, no excise duty was required to be paid at that point of time. As such, it cannot be said that the contravention of the nature mentioned in the said clause has been committed by the appellant. Clause (b) is to the effect that the manufacturer does not account for any excisable goods manufactured by him. Admittedly, the said clause does not stand contravened inasmuch as the goods were duly reflected in the statutory records. Similarly, Clause (c) is not contravened inasmuch as the appellant has not manufactured goods without

applying for registration. Clause (d) refers to contravention of any of the provisions of the rules with intent to evade payment of duty (emphasis provided). Admittedly the excisable goods were entered in records, cleared on Central Excise invoices and duty was also paid subsequently, though belatedly along with interest. As such, the said Clause (d) is also not attracted. In such a scenario, the invocation of Rule 25 for imposition of penalty for delayed deposit of duty is not in accordance with the law.

6. We find that above view is also supported by the Tribunal's decisions in the case of Condor Power Products P. Ltd. 2007 (210) ELT 137 (Tri. Del), Automotive India (Raipur) Pvt. Ltd. 2006 (203) ELT 402 (Tri. Del) and CCE, Allahabad v. R.K. Cigarettes (P) Ltd. 2007 (79) RLT 804 (CESTAT-Del.). It has been held in the said decisions of the Tribunal that delay in payment of duty due to financial crisis will not attract penalty under the provisions of Rule 25 of Central Excise Rules, but the said contravention would attract penal provisions of Rule 27, which provides maximum penalty of Rs. 5000/-. As the said rules prescribes maximum penalty of Rs. 5000/-, we accordingly reduce the penalties in each case to Rs. 5000/-.

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