

Peico Electronics and Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-18-1991

Reported in : (1995)(76)ELT171Tri(Mum.)bai

Appellant : Peico Electronics and

Respondent : Collector of C. Excise

Judgement :

1. This is an appeal directed against the order-in-original bearing No.3/CEX/1987 dated 24-11-1987 imposing a penalty of Rs. 2,000/- under Rule 173Q on the ground that the appellants had cleared the goods without making proper debit in the PLA.2. When the matter was called out for hearing, none appeared for the appellants. However, it appears that there is no need to adjourn the matter as due intimation has been given.

4. I have perused the record of the appeal. From the records it appears that the cheque was tendered on 26-6-1986 to the Bank of Maharashtra and that the same was cleared by the State Bank of India and amount debited to the appellants' account on 28-6-1986. However, due to some exigencies which was not at all explained, the Bank of Maharashtra put the date as 2-7-1986 and based on the same the appellants are deemed to have cleared the goods without there being any balance in PLA prior to 2-7-1986. The Bank of Maharashtra was the approved agent at that time to collect the excise duty and as such they are deemed to have acted for and on behalf of the Department. The letter from the State Bank of India shows that the credit has been made as early as on 28-6-1986. No explanation

was called for from the Bank of Maharashtra as to how this discrepancy arose. Further the appellants had also held the balance in RG. 23 Part-II which could have been taken as the balance available for payment of duty. In any case, therefore, there does not appear any justification in alleging that the appellants had cleared the goods without there having any balance in their account. The penalty under the circumstances, appears to be not justified. Appeal is therefore accordingly allowed. Penalty is set aside.

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