

Commissioner of Central Excise Vs. Malbro Appliances P. Ltd.

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Court : Delhi

Decided On : Sep-14-2006

Reported in : 2007(208)ELT503(Del); 2007[5]STR256

Judge : Madan B. Lokur and; Vipin Sanghi, JJ.

Acts : [Central Excise Act, 1944](#) - Sections 11AC

Appeal No. : CEAC No. 20 of 2005

Appellant : Commissioner of Central Excise

Respondent : Malbro Appliances P. Ltd.

Advocate for Def. : A.K. Tiwari, Adv.

Advocate for Pet/Ap. : Gaurav Duggal, Adv

Disposition : Appeal dismissed

Judgement :

ORDER

CM No. 3871/2005 (delay)

1. Delay in filing the appeal is condoned. CM stands disposed of. CEAC No. 20/2005

2. The Revenue is aggrieved by an order dated 31st October, 2003 passed by the Customs, Excise and Service Tax Appellate Tribunal in appeal No. E/2156/03-B/03.

3. The allegation against the Respondent was that it was engaged in the manufacture of LPG gas stoves under the brand name 'Surya Flame' and was not entitled to the benefit of the notification granting exemption to small scale units on the ground that the said brand name belonged to one M/s Shivam Industries.

4. It appears that even before the show cause notice was issued to the Respondent seeking to levy duty on the clearances effected, the duty amount was paid by the Respondent.

5. Thereafter, a show cause notice was issued to the Respondent and duty and penalty of an equal amount was imposed upon the Respondent. In an appeal filed by the respondent the Tribunal took the view that instead of levy of 100% penalty on the duty amount of Rs. 1,86,605.50/ the amount of penalty of Rs. 40,000/- be imposed, in view of the fact that the Respondent had deposited the duty even prior to issuance of the Show Cause Notice.

6. This order is under challenge before us by the Revenue. We find from a perusal of the first proviso of Section 11AC of the [Central Excise Act, 1944](#) that where the duty demanded is paid within 30 days of the date of communication of the order determining such duty, the amount of penalty that may be imposed upon the noticee could be 25% of the duty so determined. In the present case, the Respondent had paid the duty before the Assessment Order was made and in fact even before the show cause notice was issued.

7. Under the circumstances, there was no occasion for the Revenue to levy a penalty of 100%. We find that the penalty of Rs. 40,000 that has been imposed by the Tribunal works out to close to 25% of duty determined. We do not find any error in the view taken by the Tribunal and in our opinion no substantial question of law arises for our consideration.

8. Dismissed.

