

Consolidated Pneumatic Tool Co. Vs. C.C.E. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-04-1994

Reported in : (1995)(79)ELT183Tri(Mum.)bai

Appellant : Consolidated Pneumatic Tool Co.

Respondent : C.C.E. and Cus.

Judgement :

1. Though this day only the stay application was listed for hearing, the issue canvassed is linked to considering the question of penal liability and the extent of penalty, which could be justified in this case, with the consent of both the sides, we have taken up the appeal itself for disposal.

2. The allegation is that inputs received under the Modvat Scheme were removed as such, without debit of appropriate duty payable on these inputs and without taking the permission and filing the classification list and price list. An amount of Rs. 5,60,957/- was quantified by the Department, which is reported to have been paid even before issue of Show Cause Notice and the Collector has imposed a penalty of Rs. 2.50 lacs and also ordered confiscation of their building, plant and machinery etc. but allowed to be redeemed on payment of fine of Rs. 2.00 lacs (vide Order-in-Original No. 37/MP/93, dated 30-11-1993 [V(Ch.

84)15-2/OA/93].

3. Shri M.H. Patil, the Ld. Advocate mainly pleads that they are not challenging the duty demand, though certain payments are not called for strictly, they have already paid the duty amount. There was no intention to evade duty. This has arisen mainly on account of lack of proper coordination between their excise and their despatch . He would however, urge that the moment, it was pointed out by the authorities, they have paid the duty on these inputs without any objection. Hence the penalty of Rs. 2.50 lacs and order of confiscation of plant and machinery treating it, as though it is a deliberate evasion of duty, is not justified.

4. Shri Ravinder Jain, the Ld. JDR, however, contends that the amount involved is Rs. 5.60 lacs and interest is enjoyed by them for a period of more than 2 years. Moreover, the appellants are established company and they cannot plead ignorance of the requirement of the excise law.

5. After hearing both the sides, we find that in this case the redeeming factor for the appellants is that the amount has been paid even before issue of the Show Cause Notice. Their plea is that there was lack of co-ordination between the excise and the despatch . Being an organised company, it is incumbent on them to take appropriate care for complying with the requirement of law. Their negligence has resulted in non-payment of duty on certain items, ultimately resulting in loss of revenue to the department. The excise authorities are justified in invoking the penal provisions. Hence while upholding the liability to penalty on the firm, having regard to the factors pleaded before us, we reduce the penalty to Rs. 1.00 lac only (Rupees one lac only). In the facts and circumstances of the case, we also feel that the order of confiscation of plant and machinery may not be called for and hence we set aside the same.

6. In the result, the duty already paid is confirmed and the penalty is reduced to Rs. 1.00 lac (Rupees one lac only) and the order of confiscation of plant and machinery is set aside.

7. Since the appeal itself is disposed of, stay application does not survive for consideration and the same is also treated as disposed of.