

Mutulya Mills Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-09-1994

Reported in : (1996)(85)ELT74Tri(Mum.)bai

Appellant : Mutulya Mills Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order in Appeal No. SKM-1733/89,BI, dated 23-8-1989. By virtue of the Supreme Court's decision in the case of retrospective amendment of Rules 9 and 49 of the Central Excise Rules certain amounts were payable by the appellant. As per the Supreme Court's directions, they were permitted the payment of the dues in instalments. The relevant orders of the Supreme Court is as below : "Having regard to the fact that the Bombay Mills are seriously affected by a long and unprecedented strike which went on for over a year and affected the Cotton Textiles in Bombay, we are of the view that in view of these exceptional circumstances, some time should be granted to the petitioner in this case to pay upto 50% of the amount at past dues which have been directed to be paid by us under our earlier order. We would, therefore, direct that 20% of the amount representing the balance out of 50% of the past dues shall be paid by the petitioners on or before 29th March, 1984. And so far as the balance out of the amount of 50% of the past dues is concerned, the same should be paid by the petitioner in three equal instalments.

1st instalment to be paid on or before 30th June, 1984, 2nd instalment to be paid on or before 30th September, 1984 and third instalment to be paid on or before 30th December, 1984. In case of any default in payment of one of the instalments, the entire amount remaining unpaid out of the 50% of the past dues shall be paid by the petitioners immediately together with interest thereon at the rate of 12% per annum together with the amount fixed by the Chairman, Central Board of Revenue." 2. Shri M.H. Patil, the Id. Advocate does not dispute the following facts. The initial down payment of 20% of the balance of the dues should be paid on or about 29th March, 1984 as per the Supreme Court's order. However, it was paid only on 9-4-1984 after a delay of 10 days.

The subsequent two instalments were reportedly paid on the due dates.

The deptt. have collected interest on the entire dues. The third instalment was paid on their own in two instalments and there was a delay of 4 days. The appellants have paid the interest on the entire balance amount, which they claimed as refund contending that only in respect of the third instalment where there was a delay, interest is payable and interest cannot be recovered on the entire balance of amount. This contention has been rejected by the lower authorities.

Hence the appeal is before the Tribunal.

3. On going through the order of the Supreme Court and the admitted position being that the initial payment of 20% of the balance of 50% itself was delayed beyond the date prescribed by the Supreme Court.

Hence at that point of time itself, the deptt. could have refused to allow further instalments and recover the entire amount with the interest due thereon. In view of this position, the payment of interest for the entire amount outstanding by the appellant cannot be said to be a wrong payment. Moreover, there is also a default in making the instalment due on 30th December, 1984. Once they have obtained Supreme Court's orders, they are expected to make the deposit strictly in accordance with those orders and if they cannot do it, they are to move the Supreme Court for extending the time limit. The deptt. authorities have no option but to insist on the interest payment in accordance with the Supreme Court's

direction. In this case since the initial down payment itself is delayed, the entire amount attracts interest. I therefore, do not find any merit in this appeal and is, therefore, dismissed.

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