

Commissioner of Central Excise Vs. Cegat

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Court : Chennai

Decided On : Apr-10-2001

Reported in : 2001(133)ELT536(Mad)

Judge : R. Jayasimha Babu and ;K. Gnanaprakasam, JJ.

Acts : Entry Tax Act - Sections 7(5); [Central Excise Act, 1944](#) - Sections 11A(2) and 11AC; Central Excise Rules - Rule 173Q

Appeal No. : R.C.P. No. 29 of 2000

Appellant : Commissioner of Central Excise

Respondent : Cegat

Advocate for Def. : T. Ramesh, Adv. for ;N. Inbarajan, Adv.

Advocate for Pet/Ap. : K. Veeraraghavan, ACGSC

Disposition : Petition dismissed

Judgement :

ORDER

R. Jayasimha Babu, J.

1. The Supreme Court in State of Madhya Pradesh v. Bharat Heavy Electricals, considered the scope of Section 7(5) of the Entry Tax Act, which was in force in

the State of Madhya Pradesh, which inter alia, provided that in the event of certain contravention, the person committing the breach 'shall be liable to pay penalty equal to 10 times the amount of entry tax payable on such goods as if they were not goods of local origin'. The Court, at Para 13 of the judgment, has held as follows :-

'From the aforesaid it follows that Section 7(5) has to be construed to mean that the presumption contain and therein is rebuttable and secondly the penalty of ten times the amount of entry tax stipulated therein is only the maximum amount which could be levied and the assessing authority has the discretion to levy lesser amount, depending upon the facts and circumstances of each case.'

2. Section 11AC of the [Central Excise Act, 1944](#) provides for penalty for short levy or non levy of duty in these words :-

'... the person who is liable to pay duty as determined under Sub-Section (2) of Section 11A shall also be liable to pay a penalty equal to the duty so determined.'

3. Rule 173Q of the Central Excise Rules provides for penalty as follows :

'...all such goods shall be liable to confiscation and the manufacturer, producer or license of the warehouse, as the case may be, shall be liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention has taken place.'

4. In this case, the Tribunal has exercised its discretion and reduced the quantum of penalty. The Revenue seeks reference of the question as to whether the discretion so exercised could at all have been exercised, having regard to the fact that a penal provision had been invoked.

5. We do not consider it necessary to call for any reference from the Tribunal having regard to the pronouncement of the Supreme Court to which we have already referred at the commencement of this order. Despite prescription of penalty in the statutory provision, the element of discretion still lies and what is provided in the provision is the maximum. Discretion, which should no doubt be exercised judiciously, can be exercised, having due regard to the facts and

circumstances of the case, which is what the Tribunal has done. We do not find any merit in this petition and the same is, accordingly, dismissed.

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