SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Noble Elasto Inc. Vs. Commissioner of Central Excise, Chennai

Noble Elasto Inc. Vs. Commissioner of Central Excise, Chennai

SooperKanoon Citation : sooperkanoon.com/941864

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Feb-11-2011

Judge : The Honourtable Mr. M. Veeraiyan, Technical Member

Appeal No. : Appeal No.E/376/2010 [Arising out of Order-in-Appeal No.3/2010 (M-IV) dated 22.3.2010 passed by

Appellant : Noble Elasto Inc.

Respondent : Commissioner of Central Excise, Chennai

Advocate for Pet/Ap. : For the Appellants: R. Srinivasan, Consultant. For the Respondent: C. Rangaraju, SDR.

Judgement :

1. This is an appeal against the order of the Commissioner (Appeals) No.3/2010 dt. 22.3.2010.

2. The finding against the appellant is that when they were about to cross the exemption limit available under Notification No.8/03-CE dt. 1.3.03, the appellant used invoices of another firm to clear excisable goods manufactured by them. The officers visited the factory premises on 1.2.2007.

An amount of Rs.2,65,447/- was paid towards duty liability on various dates before issue of show cause notice. Original authority confirmed the demand of duty of Rs.2,28,205/- and did not impose any penalty on the appellant firm but imposed

penalties on the partners of the appellant firm and also on partners of the firm in whose name the goods manufactured by the appellant firm were cleared. The department filed appeal before the Commissioner (Appeals) seeking imposition of penalty of equal amount on the appellant firm and the Commissioner (Appeals), accordingly, imposed a penalty of Rs.2,28,205/- on the appellant.

3. Learned Consultant for the appellant submits that the Commissioner (Appeals) failed to appreciate the submission that the appellant unit crossed the exemption limit only in Jan-07 and the duty payable need to have been paid by 15.2.2007 and the major portion of the duty stands paid on 5.2.2007. Therefore, the finding of the original authority that it was merely a case of delay in registration should have been accepted. In the alternative, he also submits that they should be extended option to pay the concessional penalty in terms of proviso to Section 11AC in the light of decision of the Hon'ble High Court of Delhi in the case of K.P.Pouches (P) Ltd. Vs UOI [2008 (228) ELT 31 (Del.)].

4. Ld. SDR reiterates the finding and the reasoning of the Commissioner (Appeals).

5. I have carefully considered the submissions of both sides and perused the records. The Commissioner (Appeals) has recorded a finding that a second unit by name

M/s. Poly Moulds was opened in the same premises with the same machineries. It is clear that same work force was utilized for manufacturing excisable goods and the goods were cleared using invoices of M/s.Poly Moulds. He has held that it was a strategy devised for evading revenue. The appellants have not placed any valid reason why a second firm was shown to have been operating from the same premises with the same machineries and same work force. The finding of the Commissioner (Appeals) that it was a device to evade revenue is reasonable. Merely because the appellant paid duty before issue of show cause notice, penalty under Section 11AC cannot be waived. It is to be noticed that the appellants have not contested the demand of duty before the original authority. Another submission was made that the partners were also imposed penalties and, therefore, no separate penalty is warranted on the appellant firm. It is not disputed that appellant

firm is the main “party” involved in the evasion.

A question may be raised as to whether partners are required to be imposed separate penalties in addition to penalty imposed on the appellant firm and not the other way about. In the present appeal, I am not required to go into whether there was justification for penalties imposed on the partners. Undisputedly, the partners have not filed any appeal before the Commissioner (Appeals) against imposition of penalty by the original authority.

6. In view of the above, I find full justification in imposition of penalty by the Commissioner (Appeals) under Section 11AC of the Central Excise Act, on appeal by the department. However, the submission of learned consultant that the Commissioner (Appeals) has not given option to pay concessional penalty of 25% in terms of proviso to Section 11AC and therefore the said option should be given now by the Tribunal deserves to be accepted. In view of above, the appeal is disposed of as follows:-

a) Penalty imposed by Commissioner (Appeals) under Section 11AC is upheld.

b) However, the appellant is given an option to pay 57,051.25 within 30 days from today. If they do not pay the penalty amount within the stipulated time, the penalty payable shall be Rs.2,28,205/-.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com