

C.C.E., Ludhiana Vs. M/S. Didar Steel Complex (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-08-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Excise Appeal No. 5338 of 2004-SM(BR)

Appellant : C.C.E., Ludhiana

Respondent : M/S. Didar Steel Complex (P) Ltd.

Advocate for Pet/Ap. : Shri S.N. Srivastava, SDR for the Appellants. Shri A.H. Ansari, Advocate for the Respondent.

Judgement :

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 493/CE/APPL/LDH/2004 dated 30.7.04.

2. Heard the learned DR. None appears for the respondent inspite of notice.

3. The respondents engaged in the manufacture of non-alloy steel ingots was working under compounded levy scheme. The original authority, on a finding that the respondent instead of paying Rs. 31,07,527/- paid Rs.30,83,334/- for the period October, 2007 to March 1998 and the balance of Rs.24,193/- was paid late, ordered recovery of interest and imposed a penalty of Rs.24,193 in terms of Rule

96ZO (3).

4. On appeal by the party, the Commissioner (Appeals) held that there was no intention to delay the payment of duty, and therefore, he reduced the penalty from Rs.24,193/- to Rs.5,000/-. The department is in appeal for enhancement of penalty from Rs.5,000/- to Rs.24,193/-.

5. The appeal was earlier decided by the Tribunal vide Final Order No.1444/06-SM (BR) dated 22.09.06 holding that no proceeding initiated under section 3A could continue from the date when the said section has been omitted from the statute. The said order of the Tribunal stands set aside by the order dated 3.2.2010 of the Hon'ble High Court of Punjab and Haryana in CE Appeal No.61/07 directing the appeal to be decided afresh by the Tribunal.

6. It is noticed that the delay in payment of duty in the compounded levy scheme has occurred during the period prior to March, 1998. Learned DR fairly concedes that penal provision in the form of sub-rule (3) to Rule 96ZO of the Central Excise Rules, 1944 came into force with effect from 1.5.1998. The Tribunal in the Final Order No. 798-799/09-Ex dated 7.10.09 in E/ A.No./544-545/05 has held that the penal provision brought by Rule 96ZO (3) cannot be applied to default in relation to the period prior to May, 1998.

7. In view of the above, I hold that there is no merit in the appeal by the Department. The appeal is, therefore, rejected.

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