

Commissioner of Central Excise, Pune-i Vs. M/S Automotive Stamping and Assemblies Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-13-2010

Judge : The Honourable Mr. Ashok Jindal, Member (Judicial)

Appeal No. : Appeal No. E/3081 of 2006, E/CO/52 of 2007

Appellant : Commissioner of Central Excise, Pune-i

Respondent : M/S Automotive Stamping and Assemblies Ltd.

Advocate for Pet/Ap. : Shri S.S. Katiyar SDR for Appellant. Ms. Padmavati Patil
Advocate for Respondent

Judgement :

Per: Shri Ashok Jindal, Member (Judicial)

This appeal is filed by the Revenue against the impugned order, wherein the lower appellate authority had held that the ratio of the decision in the case of Commissioner of Central Excise, Delhi-III Vs. Machino Montell (I) 2004 (62) RLT 709 (CESTAT-LB) is squarely applicable and accordingly, the penalty was dropped. Aggrieved from the same, the Revenue is before me.

2. The learned SDR submitted that it is well settled law by the Apex Court in the case of Union of India Vs. Rajasthan Spinning and Weaving Mills 2009 (238) ELT

3 (SC) that the mandatory penalty under Section 11AC is leviable on the assessee when the duty is confirmed and in that case the lower authorities have confirmed the demand under Rule 12 of the Cenvat Credit Rules, 2002 read with proviso to Section 11A of the Central Excise Act, 1944. In that event, the penalty equal to the duty is imposable on the respondents. He, further submitted that as the respondents did not pay the 25% of penalty within 30 days of its confirmation by the adjudicating authority, the benefit of the proviso of Section 11AC should not be given to the respondents. He further prayed that in that event the impugned order to be set aside and the penalty be confirmed.

3. On the other hand, Ms. Padmavati Patil, learned Advocate appeared on behalf of the respondents and submitted that the amount involved is Rs.28,386/- and this Tribunal has discretion to reject this appeal. To support her contention, she placed reliance on Yogesh Steel Industries Vs. CCE, Bhavnagar 2007 (210) ELT 206 (Tri-Ahd.), wherein this Tribunal has considered that the amount involved is not exceeding Rs.50,000/-, in such cases discretion of Tribunal to admit appeal is unfettered. She further submitted that in this case, if the penalty is to be confirmed then it is to be restricted to 25% of the duty confirmed following the decisions of the Hon'ble Delhi High Court in the case of M/s K.P. Pouches 2008 (85) RLT 483 (Delhi), Avishkar Processing Mills 2009 (95) RLT 479 (CESTAT-Ahmd) and J.R. Fabrics 2009 (238) ELT 209 (PandH).

3. Heard both sides.

4. The learned Advocate's submission for non-admission of the appeal is rejected because the appeal having merits is to be decided on merit. Further, I find that in the impugned order, the lower appellate authority has followed the ratio in the case of Machino Montel (supra), which is no more a good law at present. Further, the Hon'ble Supreme Court in the case of Union of India Vs. Rajasthan Spinning and Weaving Mills 2009 (238) ELT 3 (SC) that the mandatory penalty under Section 11AC is leviable on the assessee when the duty is confirmed. Accordingly, I confirm the penalty equal to the duty confirmed.

5. With regards to reduction of penalty to 25% as per the proviso of Section 11AC of the Central Excise Act, 1944, I find that when the adjudication took place, the

respondent was having the benefit of the decision of *Machino Montel* (supra) that if the duty and interest has been paid before the issue of show-cause notice, penalty under Section 11AC cannot be imposed and the Commissioner (Appeals) gave the benefit of the same. In that event, by confirming the penalty by this order, it would be fair to give an option to the respondents to pay 25% of penalty confirmed within 30 days of the communication of this order as per the proviso of Section 11AC of the Central Excise Act, 1944, failing which the respondents shall be liable to pay 100% of the penalty confirmed. With these observations, the appeal is disposed off.

6. Cross objection filed by the respondents is also disposed off in the above terms.

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