

Cce, Kolhapur Vs. Modern Metal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-02-2010

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

Appeal No. : Appeal No. E/1783/06 - Mum (Arising out of Order-in-Appeal No. PII / 027/06 dated 20.02.2006)

Appellant : Cce, Kolhapur

Respondent : Modern Metal

Advocate for Pet/Ap. : Shri B.P. Pereira, JDR for Appellants. None for Respondents.

Judgement :

Per : Ashok Jindal

Revenue has filed this appeal against the order of Commissioner (Appeals) wherein the Commissioner (Appeals) has dropped the penalty under Section 11AC of the Central Excise Act, 1944 as the duty was paid by the respondent before issuance of the show-cause notice.

2. The learned DR submitted that in this case the demand has been confirmed against the respondent and they have paid duty on that but the Commissioner (Appeals) has dropped penalty under Section 11AC as the respondent has paid the duty before issuance of show-cause notice which is no more a good law in the

present scenario. He further submitted that the Hon'ble Apex Court has held in the case of Union of India vs. Rajasthan Spinning and Weaving Mills - 2009 (238) ELT 3 (S.C.) that mandatory penalty under Section 11AC is to be imposed equivalent to the duty. In this case also penalty equivalent to duty is to be confirmed.

3. Heard.

4. I have gone through the records and found that in this case while framing the show-cause notice penalty was proposed to be imposed under Rule 13 of CENVAT credit Rules, 2002 as per the show-cause notice no penalty was proposed under Section 11AC. As held by this Tribunal in the case of Schrader Duncan Ltd. vs. CCE, Mumbai III - 2010 (251) ELT 290 (Tri.-Mum) that the show-cause notice invoked 'Rule 25 read with Section 11AC, - a phraseology that reflects the misconceptions of the author of the show-cause notice. The department wanted to penalize the appellant under Rule 25. The authorities below however, chose to venture into the domain of Section 11AC which is not warranted in this case. The same Judgment is applicable to this case also, as there is no proposal for penalize the respondent under Section 11AC of the Central Excise Act, 1944, hence no penalty under Section 11AC can be imposable. Hence, the submission of the learned DR, that the mandatory penalty under Section 11AC of the Central Excise Act, 1944 is to be confirmed, cannot be accepted in the absence of the proposal for the same in show-cause notice.

5. With this observation the appeal is rejected.

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