(2010) 03 BOM CK 0126

In the Bombay High Court

Case No : Central Excise Appeal No. 163 of 2006

Commissioner of C. Ex. APPELLANT

Vs

Cable Corporation of India RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC

Citation : (2010) 253 ELT 762

Hon'ble Judges : V.C. Daga, J;K.K. Tated, J

Bench : Division Bench

Advocate : Vijay Kantharia, for the Appellant; M.H. Patil, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned Counsel for the rival parties.

2. This appeal is directed against the order dated 25-7-2005 [2006 (197) E.L.T. 258 (Tri.-Mumbai)] passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai.

3. This appeal was admitted by this Court vide order dated 11-4-2007 to consider the following question of law:

Whether on the facts and in the circumstances of the case and in law the Hon''ble CESTAT was justified in waiving the penalty equivalent to the amount of duty already paid of Rs. 79,389/- u/s 11AC of the Central Excise Act, 1944 when the said Act for its imposition prescribed mandatory penalty equal to the amount of duty outstanding, even in case where'' the payment of duty has already been made prior to issue of show cause notice?

4. The first Appellate Authority has recorded the finding of facts as under:

7. I have carefully considered the facts on record, findings in the impugned order, submissions made by the appellant and the law governing the subject. On considering the fact that appellant had immediately discharged the duties on

audit objection even prior to issue of the show cause notice, ratio of the Tribunal''s decision in the case of Hemant Plastics & Chemicals Ltd., and also Net Plast Ltd., both cited in support, would be applicable. Therefore, penalty is not liable to be imposed. I also find that without establishing a mala fide intent to evade duty inter alia, by reasons of suppression of information or misinformation to the department or by reasons of fraud or collusion, Section 11AC is not applicable for penalization. I find that no such circumstances are established from any evidence on record. On the contrary, it is not disputed that at the time of entry of the said inputs, there was no irregularity in availment of Modvat credit. Also, appellants claim before the adjudicating authority was that these goods were defective and not liable to be used and they were available in the factory, not yet cleared. It is immaterial that an insurance claim was filed, which is also not shown to be honored by the Insurance Company. In any case, any liability to duties would have arisen only if the inputs were cleared from the appellants unit.

(Emphasis supplied)

5. The aforesaid findings were affirmed by the Tribunal in the appeal filed by the Revenue in the following words:

2. After hearing both sides, I do not find any justifiable reason to impose penalty upon the respondents, inasmuch as the duty was paid prior to the show cause notice and input on which the respondents had taken Modvat credit was still lying in their factory premises pending finalization of their insurance claim. In such a case no mala fide can be attributed to the respondents. Hence, no infirmity is found in the Commissioner (Appeals) views on non-imposition of penalty. The revenue''s appeal is accordingly rejected.

(Emphasis supplied)

6. Having seen the findings in the impugned orders, we are of the view that both the Courts below were justified in holding that the provisions of the Section 11AC of the Central Excise Act, 1944 were not attracted in the present case. This finding of fact cannot be said to be illegal or perverse. In that view of the matter, Section 11AC is not at all attracted as such the question raised is answered against the Revenue and in favour of the Respondent-Assessee. The appeal is, therefore, dismissed with no order as to costs.