(2005) 03 DEL CK 0087

In the Delhi High Court

Case No : CM No. 3873 of 2005

Commissioner of Central Excise		APPELLANT
	Vs	
Friends Dyers		RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 15

Citation : (2005) 03 DEL CK 0087

Hon'ble Judges : Swatanter Kumar, J;S. Ravindra Bhat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. For the reasons stated in the application which is supported by an affidavit, we condone the delay in refiling the application. Accordingly, the application stands disposed of.

We have heard the learned counsel appearing for the Appellant at some length in the merits of the case.

The challenge in this Appeal is to the order of the Customs, Excise and Service Tax Appellate Tribunal dated 3rd June, 2004 wherein, for the reasons recorded hereinafter, the Appellate Tribunal had reduced the penalty from Rs. 11,25,000/- to Rs. 25,000/- :

2.The submission of the appellant is that the penalty is discretionary and the lower authorities were not justified in imposing penalty equivalent to the duty amount, when the delays involved were only of a few days, ranging from 1 day to 28 days. That too when interest at 24% had been paid.

3. They have also relied on the decisions of this Tribunal in the case of 2000 (122) ELT 633 and 2002 (81) ECC 808 wherein the Tribunal held that maximum penalty is not required to be imposed.

4. We have perused the records and have considered the submissions made by

both sides. The appellants have paid the duty amounts due from them. The delay involved is only of short periods and Revenue has been compensated for the delay by paying interest @ 24%. In these circumstances, imposition of penalty of a huge amount was not justified. Accordingly, penalty amount is reduced to Rs. 25,000/- (Rupees Twenty Five Thousand Only) and the appeal is partially allowed to that extent.

[Operative part of the order Pronounced in the open Court on 11.5.2004]

(Justice K.K. Usha) President

5. The Learned Counsel appearing for the Appellant contended that the above findings are not in consonance with the principles of law as wells as to the notification issued under Rule 15 of the Central Excise Act dated 28th June, 2001.

6. The Competent Authority had imposed duty of Rs.11,25,000/- which was to carry interest @ 24 per cent in terms of Paragraph 9(5) of the said notification while exercising their judicial discretion, the Tribunal has reduced the amount of penalty to Rs 25, 000/- rather than the amount equivalent to the amount of duty imposed. The question whether the Tribunal has any jurisdiction to pass such an order in law is kept open as we do not propose to interfere in the exercise of discretion by the Tribunal, keeping in view the peculiar facts and circumstances of the present case.

7. We do not see any reason to interfere in the discretion exercised keeping in view the facts and circumstances of the case. The Appeal has no merit. The same is dismissed.

