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(2016) 07 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 855, 856 Of 2007, 38, 39 Of 2010

M/s Intex Infosolutions Ltd. And Ors. APPELLANT

Vs

C.C.E. Delhi-II And Ors. RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:
Central Excise Act, 1944 — Section 11AC

Citation : (2016) 07 CESTAT CK 0003

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : B. L. Narsimhan, Dharam Singh

Final Decision : Dismissed

Judgement

1. Both the Revenue as well as assessee have preferred appeal against the impugned order dated 12.01.2007 passed by the Commissioner (Appeals),

Central Excise, New Delhi. The grievance of the Revenue is that reduction in the quantum of penalty from 100% to 25% in the impugned order is not

in conformity with the statutory provisions.

2. Ld. DR appearing for the Revenue reiterates the submissions recorded in the grounds of appeal.

3. On the other hand, Ld. Advocate appearing for the Respondent submits that as per Section 11AC of the Central Excise Act, 1944 the Adjudicating

Authority has to give an option to pay 25% of reduced penalty within 30 days from the date of the communication of the order. It is his submission that

the Adjudicating Authority has not given such option and the Commissioner (Appeals) for the first time, vide the order dated 12.10.2009 has given an

option to the assessee to deposit the reduced amount of penalty within 30 days from the date of communication of such order. Thus, in compliance of

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the said order, since the Respondent has deposited 25% of penalty, there is no question of payment of any further penalty in terms of Section 11AC of

the Act. To support his above stand the Ld. Advocate has relied on the Boardâ??s Circular dated 12.05.2008 issued by CBEC and also the following

judgments delivered by the judicial forums.

a) K.P. Pouches (P) Ltd. vs CCE, 2008-ELT 31 (Del).

b) CCE vs Krishanram Dyeing & Finishing Works, 2013 (298) ELT 376 (Guj.).

c) CCE vs Santosh Textiles Mills, 2016 (234) ELT 54 (Guj.) affirmation 2016 (334) ELT A46 (SC).

d) CCE vs RA Shaikh Paper Mills Pvt. Ltd. 2010 (259) ELT 53 (Guj.) Affirmation 2016 (335) ELT 203 (SC).

e) Chandan Steel Ltd. vs CCE 2015, 2015 (316) ELT 573 (Guj.).

f) CCE vs GP Prestress Concrete Works 2015 (323) ELT 709 (Guj.).

g) Intex Technologies (India) Ltd. vs CCE 2014 (307) ELT 760 (Tri. Del).

4. I have heard the Ld. Counsel for both the sides and perused the records.

5. The period of dispute in this case is from 2001-2002 and 2002-2003. The issue as to whether the option for payment of reduced amount of penalty

should be indicated in the Adjudicating order, the Honâ??ble Delhi High Court in the Case of K. P. Pouches (supra) have held that adjudicating

authority under the Act should explicitly state the option available to the assessee under Section 11AC. The CBEC vide Circular dated 22.05.2008 has

clarified that the Adjudicating Authority should specifically state in the order the option to pay reduced amount of penalty.

6. Further the issue in hand also decided by the Honâ??ble Gujarat High Court in the case of Krishnaram Dyeing & Finishing Works (supra), G.P.

Prestress Concrete Works (supra) and K. P. Pouches (P) Ltd. (supra). Appeal filed by the Revenue against the judgment of Honâ??ble Gujarat

High Court in the case of Santosh Textile Mills (supra) was dismissed by the Honâ??ble Supreme Court vide order dated 07.07.2015, reported in

2016 (334) ELT A-46 (S.C.). Further, the judgment of Gujarat High Court in the case of Shaikh Paper Mills (supra) was also challenged by the

Revenue before Honâ??ble Supreme Court, which was dismissed vide order dated 18.04.2016 as reported in 2016 (335) ELT 203 (SC).

7. In view of the settled position of law, option given by the Commissioner

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(Appeals) vide impugned dated 12.10.2009 for payment of reduced amount

of penalty under Section 11AC ibid is in conformity with the statutory provisions. Therefore, I do not find any infirmity in the impugned order and

dismiss the appeals filed by the Revenue. In view of the dismissal of appeal filed by the Revenue, the subsequent prayer made by the assessee for

withdrawing its appeals are considered and accordingly, the appeals of assessee are dismissed as withdrawn.

7. The appeals are disposed of in above terms

(Dictated and pronounced in open court)

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