
(2006) 08 P&H CK 0052
In the Punjab And Haryana At Chandigarh

The Commissioner, Central Excise

APPELLANT

Vs

Flora Continental Ltd.

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AC

Citation : (2006) 08 P&H CK 0052

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an appeal filed by the revenue against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, "the Tribunal") in Appeal No. E3650/04-B decided on February 24, 2005, raising the following substantial questions of law:

i) Whether the penalty limit u/s 11AC of the Central Excise Rule 1944 is equal to the duty demanded and the same is mandatory?

ii) whether the Ld. Tribunal has discretion to impose lesser penalty?

2. Briefly the facts are that a penalty of Rs. 33,603/- was levied on the assessee by the Deputy Commissioner of Central Excise, in addition to confirmation of demand of equal amount of duty, u/s 11AC of the Central Excise Act, 1944 (for short "the Act"). In appeal, the Commissioner (Appeals) upheld the order of the Deputy Commissioner. Still aggrieved, the assessee went in an appeal before the Tribunal. The Tribunal vide its order dated 24.2.2005, while dismissing the appeal on the issue of levy of duty, reduced the amount of penalty from Rs. 33,603/- to Rs. 5,000/-. Question of law raised by the revenue in the present case has been considered by this Court in CEA No. 56 of 2005 titled F15 as Commissioner of Central Excise, Faridabad v. Ellpea Paramount Pvt. Ltd., decided on July 21, 2006, wherein it was held that once the case is covered u/s 11AC of the Act, there is no rule for discretion on the quantum of penalty to be imposed. It was

further held that penalty was not to be imposed mechanically but only on establishment of mensrea as mentioned in the said Section and the matter was remanded back to the Tribunal for decision afresh.

3. In the present case, the penalty has been reduced by the Tribunal, in which there is no discretion vested with the Tribunal. However, considering the fact that the total amount of penalty originally levied in the present case was Rs. 33,603/-, which the Tribunal had reduced it to Rs. 5,000/-. Keeping in view the smallness of amount involved in the present case and that too on account of penalty, we do not deem it appropriate to remand this case to the Tribunal for fresh decision as the same would entail spending of more amount and energy.

4. Accordingly, without laying down any precedent on the merits of the issue involved, we deem it appropriate to dismiss the present appeal.