**(2014) 01 KAR CK 0145**

**In the Karnataka High Court**

**Case No :** CSTA. No. 24 of 2006

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|---|---|
| The Commissioner of Customs, C.R. Building | APPELLANT |
| Vs | |
| M/s. American Power Conversion (India) Pvt. Ltd. and Shri Shivaram, Logistics Manager, M/s. American Power Conversion (India) Pvt. Ltd. | RESPONDENT |

**Date of Decision :** 16-01-2014

**Acts Referred:**

**Citation :** (2015) 316 ELT 39 : (2014) 25 GSTR 561

**Hon'ble Judges :** Dilip B. Bhosale, J;B. Manohar, J

**Bench :** Division Bench

**Advocate :** Y. Hariprasad, for the Appellant; N. Anand, for Sri. K.S. Ravishankar for R1 and R2, for the Respondent

## Judgement

Dilip B. Bhosale, J.—This Customs Appeal is directed against the common order dated 12-07-2005 by which, three appeals, including the appeal filed by the respondent bearing Appeal No. C/195/2004, were allowed insofar as levy of penalty and interest is concerned. By this order, the Cestat set aside the order confirming the penalty and interest passed by the Adjudicating authority and the Appellate Authority dated 3-7-2003 and 19-02-2004, respectively. The only question that fell for consideration of the Cestat was whether penalty and interest could be imposed when the duty had been deposited before the issuance of the show cause notice? It appears from the order of the Cestat that the respondent did not contest the appeal on merits and the only contention urged was that they are not liable to pay penalty and interest in view of the fact that they had paid the duty even before the show cause notice was issued. The Cestat set aside the penalty and interest based on the judgments of this Court and the Apex Court referred to in the impugned order.

2. Learned counsel for both the sides state that the issue whether the penalty and interest could be imposed when the duty has been deposited before issuance of show cause notice is settled by the Hon''ble Supreme Court in the case of

Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills, and in a group of civil appeals reported in Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, . The Supreme Court has taken a view that the payment of duty/differential duty, whether before or after the show cause notice is issued cannot alter the liability for payment. In view of these judgments, learned counsel for the parties fairly state that the law laid down in the judgments relied upon by the Tribunal in the impugned order is no more a good law and that it stands set aside. In this view of the matter, we allow the appeal wherein hardly Rs. 50,000/- penalty had been imposed. Accordingly, the order dated 12-07-2005 passed by the Cestat in Appeal No. C/195/2004 is set aside.