

COMMR. OF CENTRAL EXCISE, HYDERABAD-III

APPELLANT

VERSUS

M/S. PRUDENTIAL SPINNERS LTD.

RESPONDENT

O R D E R

This appeal is directed against the judgment and order dated 03.10.2002 passed by CEGAT, South Zonal Bench at Bangalore. The issue that was urged before the Tribunal by the respondent herein was whether in view of the fact that there was a delay of one or two days in making payment of duty with reference to clearance of the goods and in the facts and circumstances, imposition of duty was justifiable. The aforesaid issue was considered by the Tribunal and after considering the facts and circumstances of the case, the contention of the counsel appearing for the respondent was accepted. In view of the fact that there was delay of only one or two days in making the payment of duty and, therefore, some lenient view could be called for and, therefore, penalty was reduced to Rs. 1 lakh as against Rs. 17,06,632/-.

A show cause notice was issued by the appellant herein in which it was stated that the assessee had

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cleared the finished goods either on less payment of duty or without payment of duty for certain invoices and thus violated the provisions of the Central Excise Rules read with Section 11 A of the Central Excise Act.

In the show

cause notice, it was specifically stated that in view of the aforesaid short payment or non payment, penalty equal to the duty payable should be paid by the assessee as provided under Section 11 AC of the Central Excise Act.

The extended period of limitation was also invoked by the department. By referring to proviso to Section 11 A of Central Excise Act, a reply to the show cause notice was filed. The Commissioner considered the allegation against the respondent as also the reply submitted by him and on appreciation thereof, came to a finding that the charge of evasion of duty through mis-statement, suppression and fraud was proved justifying the application of extended period of five years as provided in Section 11 A of the Central Excise Act, 1944. It was also held that in equal quantity of excisable goods were removed by the assessee without payment of duty. Finally, by exercising the powers under Section 11 AC, penalty was also imposed to the extent of equal amount of the duty which is 100% penalty.

Being aggrieved by the aforesaid order passed by the Commissioner of Customs and Central Excise, an appeal

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was filed before the Tribunal. Before the Tribunal, only one issue was raised by the respondent, which was with regard to the quantum of penalty under Section 11 AC of the Central Excise Rules. No other issue was raised and, therefore, we are not required to go into any other aspect of the matter except for deciding as to whether or not the quantum of penalty imposed by the Tribunal is justified or not in the facts and circumstances of the present case. In this connection, we may appropriately refer to the decision of the Division Bench of this Court in Union of India Vs. Rajasthan Spinning and Weaving Mills and Commissioner of Customs and Central Excise Vs. Lanco Industries Ltd. reported in 2009(13) SCC 448. In the said judgment, scope and ambit of Section 11-AC was considered and decided by this Court.

The learned counsel appearing for the appellant relies on the said judgment in order of substantiate his submission that the Tribunal was not justified in reducing the quantum of penalty to only Rs. 1 lakh in view of the mandatory provisions of Section 11 AC of the Central Excise Act. Learned counsel appearing for the respondent, however, submits that there was only a delay of one or two days in making payment of duty with reference to the clearance of goods and that duty was paid even prior to issuance of the show cause notice and,

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therefore, the Tribunal was justified in reducing the quantum of penalty to Rs. 1 lakh. We have taken notice of the aforesaid submission also. However, reference is

made to the decision of Rajasthan Spinning and Weaving Mills (Supra). We find in the said case also, a similar

submission was made contending, inter alia, that there was no warrant for levy of penalty since the assessee had deposited balance amount of excise duty that was short paid at the first instance and that too even before the show cause notice was issued. Tribunal upheld the said

contention in the said case which was set aside by this Court in the decision of Rajasthan Spinning and Weaving Mills (Supra). Since the submission here is of identical nature, the aforesaid submission is only to be rejected in view of the findings recorded by this Court that once the section is held to be applicable in a case, the authority concerned would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-section 2 of Section 11

A. On consideration of the factual position, we also hold that, in the present case, the Tribunal was not justified in reducing the quantum of penalty as penalty under the provision of the Act must be imposed equal to

Mr. B.V. Balaram Das, Adv.

For Respondent(s)

Mr. S. Nanda Kumar, Adv.
Mr. Satish Kumar, Adv.
Mr. R. Satish Kumar, Adv.
Ms. Anjali Chauhan, Adv.
Ms. Seema Shukla, Adv.
Mr. Rakesh K. Sharma, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed. The order of the
Tribunal is set aside and the order of the
Commissioner is restored with no order as to costs
in terms of the signed order.

(DEEPAK MANSUKHANI)
Court Master

(RENU DIWAN)
Court Master

(Signed order is placed on the file)