

2014 (2) ECS (193) (Tri - Del.)

In the Customs, Excise & Service Tax Appellate Tribunal

West Block No. 2, R.K. Puram, New Delhi-110066

CCE, KANPUR

Vs

M/S A.V. VALVES LTD.

Date of Hearing/ Decision: 26.02.2014

Excise Appeal No. 3140 of 2005

(Arising out of the Order - in -Appeal No. 271-CE/APPL./KNP/2005 dated 03.06.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur).

Appearance:

Shri Amresh Jain, Authorized Representative (DR) for the Appellant.

Shri Bipin Garg, Advocate

for the Respondent.

CORAM-

Hon'ble Ms. Archana Wadhwa , Member (Judicial)

Hon'ble Shri Rakesh Kumar, Member (Technical)

On account of default in payment of duty, penalty is required to be imposed under Rule 27 of the Central Excise Rules, 2002. In as much as the said rules prescribe maximum penalty of Rs. 5000/- (Rupees Five Thousand), we imposed the said penalty on the respondent and allow the Revenue's appeal to that extent. (Para 3)

Final order No. 50899/2014 Dated : 26.02.2014

Per. Archana Wadhwa :-

Being aggrieved by the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. After hearing both the sides duly represented by Shri Amresh Jain learned DR for the appellant and Shri Bipin Garg, learned Advocate for the respondent, we find that the shot issue involved in present appeal is that when the respondent default the payment of duty on the due date, in terms of provisions of Rule 8 of Central Excise Rules, and where he has subsequently paid the said duty alongwith the interest, whether penalty is required to be imposed upon him or not.
3. The Appellate Authority has not imposed any penalty upon him by observing that the entire duty and interest stands paid before the

issuance of the show cause notice and terms of the law declared by Large Bench of the Tribunal in the case of CCE, Delhi - III, Gurgaon vs. Machino Montell (I) Ltd. Reported in 2004 (168) E.L.T. 466 (Tri.-LB), no penalty is required to be imposed. However, we find that the said Larger Bench decision stand reversed by the Hon'ble Punjab & Haryana High Court. The law stand declared by the Hon'ble Gujrat High Court in the case of CCE vs. Saurashtra Cement Ltd. reported in 2010 (260) E.L.T. 71 (Guj.) laying down that on account of default in payment of duty, penalty is required to be imposed under Rule 27 of the Central Excise Rules,2002. In as much as the said rules prescribe maximum penalty of Rs. 5000/- (Rupees Five Thousand), we imposed the said penalty on the respondent and allow the Revenue's appeal to that extent.

(Dictated and pronounced in the open court)