

2014 (3) ECS (137) (Tri -Ahd.)

In the Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench, Ahmedabad

C C E & S.T., AHMEDABAD

Vs.

M/S. MAFATLAL INDUSTRIES LIMITED

Date of Hearing / Decision: 18.07.2014

Appeal No. E/350/2006

(Arising out of OIA No. 157 to 158/2006(Ahd-III) CE/DK/Commr (A)

Dated 11.09.2006 Passed by Commr. (Appeals) C. Excise & Customs,
Ahmedabad)

Appearance:

Shri J. Nair, A.R.

None

For the Appellant

For the Respondent

CORAM:

Hon'ble Mr. H.K. Thakur, Member (Technical)

Order No. A/11397 / 2014 Dated 18.07.2014

" The issue involved in this case is whether Section 11AC penalty can be reduced once it is established that extended period for demanding duty under Section 11AC of the Central Excise Act, 1944 is applicable. It is observed from the Hon'ble Supreme Court order in the case of UOI vs. Dharmendra Textile Processors (supra) that authorities are left with no discretion to impose lesser penalty under Section 11AC of the Central Excise Act, 1944. Apex Court in Para 26 of this judgment has held that Union Budget of 1996-97 introduced Section 11AC in the Central Excise Act, 1944 and has made no scope for any discretion in terms of quantum of penalty." (Para 4)

Per: Mr. H.K. Thakur:

This appeal has been filed by the Revenue against OIA No. 157 to 158/2006(Ahd-III)CE/DK/Commr(A) dated 11.09.2006. The grounds taken by the Revenue are that the first appellate authority has reduced the penalty of Rs. One lakh imposed by the adjudicating authority under Section 11AC of the Central Excise Act, 1944, to Rs. 10,000/- against the respondent.

2. None appeared on behalf of the respondents on the hearings fixed on 20.01.2012 and thereafter.

3. Shri J. Nair (AR) appearing on behalf of the Revenue argued that Commissioner (Appeals) in Para -6 of the OIA dated 11.09.2006 has clearly held that extended period under the proviso to Section 11A (1) of the Central Excise Act, 1944 is applicable and therefore, no authority has a discretion to reduce the mandatory penalty imposed under Section 11AC of the Central Excise Act, 1944, as held by the Hon'ble Apex Court in the case of UOI vs. Dharmendra Textile Processors - [2008 (231) ELT 3 (S.C.)].
4. Heard learned A.R. and perused the case records. The issue involved in this case is whether Section 11AC penalty can be reduced once it is established that extended period for demanding duty under Section 11AC of the Central Excise Act, 1944 is applicable. It is observed from the Hon'ble Supreme Court order in the case of UOI vs. Dharmendra Textile Processors (supra) that authorities are left with no discretion to impose lesser penalty under Section 11AC of the Central Excise Act, 1944. Apex Court in Para 26 of this judgment has held that Union Budget of 1996-97 introduced Section 11AC in the Central Excise Act, 1944 and has made no scope for any discretion in terms of quantum of penalty.
5. In view of the law laid down by the Apex Court, reduction of penalty by the first appellate authority from Rs. 1,00,000/- to Rs. 10,000/-, under Section 11AC of the Central Excise Act, is not proper. Accordingly, the order passed by the first appellate authority is required to be set-aside and the order passed by the adjudicating authority dated 31.03.2006 is required to be upheld.
6. In view of the above observations, appeal filed by the Revenue is allowed.

(Operative part of the order pronounced in the Court)