

SUPREME COURT OF INDIA

T.T.K. Prestige Ltd.

Vs.

Commissioner of Central Excise

(M Shah and D Dharmadhikari JJ.)

03.12.2002

ORDER

1. This appeal is filed against the judgment and order dated 18th January, 2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench at Madras in Appeal No. E/801/1999.
2. The Tribunal by the impugned judgment and order confirmed duty demand except on the four matters which were required to be re-adjudicated on invocation of larger period. The Tribunal also confirmed penalty imposed under Rule 173Q and for the imposition of mandatory penalty under Section 11AC, matter was remanded to Commissioner for de novo consideration. However, that order was limited to the extent only for quantification of the penalty amount. The Tribunal also directed that for non-imposition of penalty in respect of stock transfers from Bangalore Factory to Hosur Factory whether the applicant was entitled to Motivate credit was required to be taken into consideration while fixing the penalty under Section 11AC in the light of judgment rendered in the case of *Engineers Combine v. C.C.E.*¹.
3. Learned Counsel appearing on behalf of the appellant submitted that order of imposition of penalty requires to be set aside on the ground that the appellant-Company itself has pointed out the mistake committed by some officers of the Company. The Company itself wrote a letter dated 7th January, 1998 and voluntarily disclosed the said mistake and stated that the Company was prepared to pay the entire amount even though it was partly barred by limitation. He, however, submitted that this was an inadvertent mistake committed by some officers of the Company which was paying more than Rs. 28 crores of excise duty during the period in question, as against the so-called non-payment of excise duty for a sum of Rs. 2 crores approximately. He pointed out that the proviso to Section 11A(1) specifically requires that there should be fraud, collusion, wilful mis-statement and suppression of facts with an intent to evade duty for levying penalty, but in case management detects non-payment of duty and discloses the same to the department and makes voluntary payment of duty, there is no question of imposing any penalty. In support of this contention, learned Senior Counsel for the appellant referred to the provisions of Section 11 and Section 11AC of the Central Excise Act and the relevant judgments on the point.

4. Considering the dispute involved in the matter and the fact that some of the issues are remitted to the Commissioner, Central Excise for deciding de novo, it would be just and proper that instead of deciding the questions raised in this appeal, same be decided by the Commissioner afresh in accordance with law after considering all the relevant facts. Liberty to produce additional documents to both the parties. However, it is clarified that with regard to the payment of the excise duty, learned Senior Counsel for the appellant has not raised any contention because the appellant has willingly tendered the said amount without any dispute.

5. The appeal is allowed accordingly. The Commissioner to decide whether this was a fit case for imposing penalty. There shall be no order as to costs.

¹[1999 (113) E.L.T. 440 (T)]