

THE DEA(R)TH PENALTY

The "compounded levy scheme" of levying duty, has its own chequered history. At the outset, it was a shame on the part of the Government, which has said that this scheme was introduced, due to the "evasion" prevalent in certain sectors. The Government, which has its own wherewithal to combat such "evasion" has conceded its defeat, by introducing this scheme.

The scheme itself can be compared to the premature birth of a child, considering the complexities that ensued. The birth was marked by introduction of the scheme, its immediate withdrawal, subsequent introduction, postponing its effective date, and what not? Then came the bout of legal battles, challenging the legality of the scheme itself, which ultimately culminated in revenue's favour. Then came the issue, as to whether the equivalent amount of penalty prescribed in the relevant rules, for default in discharging the determined duty, is mandatory or not. Any attempt to list down the decisions of the Hon'ble Tribunal, holding that such penal provisions are not mandatory in nature, would only increase the length of this article. And thus, everybody thought that the story of the "compounded levy scheme" is no more compounding.

Now comes a shocking decision from the Hon'ble High Court of Allahabad, wherein the decision of the Hon'ble Tribunal in reducing the penalty under Rule 96 ZP of the then Central Excise Rules, 1944 has been castigated by the Hon'ble High Court in the following words :

"Hence, the Tribunal has been over indulgent to the assessee by reducing the penalty, which it strictly speaking could not do".

This scathing remark on the Hon'ble Tribunal has prompted us to re-visit the issue in its entirety, from the origin of the scheme itself.

Section 3 A of the Central Excise Act, 1944 has been enacted in the year 1997, which was followed by issue of various notifications, incorporating various provisions in the Central Excise Rules, 1944, to operationalise the scheme. The first effective notification in this regard was Notification No.33/97 CE (NT) Dated 01.08.1997, by which Rules, 96 ZO (to deal with Iron and Steel ingots) and 96 ZP (to deal with re-rolled productions of Iron and Steel), were introduced. It is worthwhile to notice at this stage that these rules have been enacted, by virtue of the rule making powers vested with the Government, under Section 37 of the Act. At the time of its original enactment, these rules contain only the provisions for demand of interest, if the duty was not paid within the due dates. Subsequently, by issue of Notification 7/98 CE (NT) Dated 10.03.1998, penal provisions to the effect that in the event of failure of the assessee to pay the duty liability within the specified due dates, the assessee shall be liable to pay a penalty equal to the duty amount or rupees five thousand, whichever is greater. This provision has come into effect from 01.05.1998. The above penal provision has been the subject matter of dispute as to whether the equal amount of penalty prescribed under the Rules, is mandatory or not. By following the celebrated decision of the Hon'ble Supreme Court in the case of Escorts JCB _____ reported in _____, wherein it was held by the Hon'ble Apex Court that the similarly worded provisions of the Section 11 AC of the CE Act, 1944 were also not mandatory but only discretionary, several decisions have been rendered by various benches of the Hon'ble Tribunal, that the penal provisions under the said

rules are not mandatory in nature, thus putting to rest, the last surviving dispute on the "compounded levy scheme".

As the apple cart has now been toppled by the Hon'ble High Court of Allahabad, we wish to raise a basic question, which appears to have been not raised hitherto, as to whether the provisions for penalty under the above said rules have legal sanction or not?

As already stated the rules for the compounded levy schemes were framed, by virtue of the rule making powers vested with the Government, under Section 37 of the CE Act, 1944. The said section paves way of delegated legislation in the field of Central Excise and enables the Government to notify rules, for various situations enumerated in the said section. Some of the instances, for which the Government is empowered to make rules, may be cited by way of example.

a)