

**Bombay High Court** in Fibre Foils on Penalty under Excise Rules after considering SC Dharmendra Textile & Rajasthan Spinning:

“The issue, however, cannot rest there. Subsequent to the judgment in Dharmendra Textile Processors (Supra) it appears that the Union of India’s contention was in all such cases that penalty has to be mandatory. The issue again came up for consideration before the Supreme Court in Union of India vs. M/s. Rajasthan Spinning & Weaving Mills, 2009 (238) E.L.T. Page 3 (S.C.). The Hon’ble Supreme Court set out the ratio in Dharmendra Textile Processors (supra). Having so done it was set out that **before penalty can be imposed, it was incumbent that the A.O., must record a finding, as to the ingredients of satisfaction of Section 11AC.** In other words if the ingredients of Section 11AC are not satisfied then no penalty can be imposed. Similarly Rule 57-I (4) must be so construed. In the instant case the learned Tribunal had not addressed itself, to this issue. On this finding itself ordinarily we ought to have remanded the matter back to the Tribunal for reconsideration. However, in our opinion, such an exercise would only result in waste of the judicial time. We had an occasion to peruse the findings of the Commissioner (Appeals). We find that the Commissioner (Appeals) has also not addressed the issue as to whether the penalty is imposable on account of fraud, willful misstatement, collusion or suppression of facts or contravention of any other provisions of the Act or Rules made there under with an intent to evade duty. It is, therefore, clear that not only there has to be fraud or willful misstatement or collusion or suppression of facts or contravention of any of the provisions of the Act or Rules, but that must be with an intent to evade the payment of duty...In our opinion, therefore, the penalty imposed was really without jurisdiction and consequently we set aside the order of the Tribunal, Commissioner (Appeal) and A.O., to the extent of only penalty imposed under Rule 57-I (4). The rest of the order stands confirmed. Appeal disposed off accordingly.”