Kemp and Co. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-13-1997

Reported in : (1997)(94)ELT113TriDel

Appellant : Kemp and Co.

Respondent : Collector of Central Excise

Judgement :

1. In this Stay Application the appellants claimed waiver of pre-deposit of amounting to Rs. 39,54,672/- which has been confirmed by the Superintendent by his letter dated 18-12-1988 in pursuance of the disposal of the Appeal by the Collector of Customs (Appeals).

2. We have heard both sides in the matter. The ld. Counsel submits that the Appellants had disputed classification. The department demanded duty to the extent of Rs. 39,54,672/- in terms of the allegations. It is their contention that even this amount was disputed by them in view of the fact that the final goods namely toys manufactured by them was without the aid of power and the same was exempted vide Notification No. 167/86, dated 1-3-1986 issued under sub-rule (1) of Rule 8 of Central Excise Rules 1944. The department while calculating the duty had included the value of all the raw materials supplied by an independent manufacturer of certain components when they manufactured the same with the aid of power. It is his submission that the components supplied by an independent manufacturer namely Blow Plast Ltd. are to be the basis for denying the benefit as there is no allegation that Blow Plast Ltd. is not an independent unit. He submits

that there is no basis to proceed against the appellants. As regards the proviso to the Notification ld. Counsel submits that this proviso is not attracted in their case. Ld. D.R. reiterates the departmental arguments.

3. We have carefully considered the submissions made by both sides. We find that the appellants have made out a prima facie case for dispensing with the pre-deposit of the amount on the basis of the grounds made in the appeal and submissions made and citations relied on. The Department has challenged the appellants manufacturing finished product without aid of power and have proceeded only on a short point that some of the components received from independent manufacturers are manufactured with the aid of power. On prima facie consideration this cannot be the basis to deny the benefit of the Notification. In view of the law cited by the ld. Counsel we grant waiver of pre-deposit and stay its recovery by allowing this Stay Application. Registry shall list the case in its turn.