Ablaze Process Systems Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-06-1997

Reported in : (1997)(96)ELT402TriDel

Appellant : Ablaze Process Systems Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The present application is for waiver of duty of Rs. 44,53,487.65 and of a penalty of Rs. 2,00,000/-imposed on the applicants.

2. Shri Abrol appearing as the authorised representative of the applicants, being one of its Directors, submitted that the issue involved in the appeal is the classification of glass and glasswares manufactured by them competing sub-heading of Central Excise Tariff 70.12 and 70.15. The applicants claimed that their product would fall under the former sub-heading as laboratory glassware. The Commissioner however in the impugned order has held that they are of industrial use and they are to be classified under the latter sub-heading. Shri Abrol however pleaded that the department cannot invoke the longer period for demanding the duty under Section 11A because the applicants have not suppressed any facts from the department. He referred to the representation made to the Board by the Small Scale Industries Association listing out the items of products requiring classification.

He also referred to the fact that another unit which is a sister concern holding the licence under CET had surrendered the same which would support their case for classification. Shri Abrol referred to their balance sheet as on 31-3-1996 and pleaded that they had made loss over Rs. 58,000/- during the year and pre-deposit of duty and penalty would cause them undue hardship.

3. Shri Gurdeep Singh, the ld. DR for the department opposed the stay and submitted that the issue of classification between the two captioned subheadings will have to be decided with reference to the nature of the product and the section and chapter notes which is not permissible at this stage when the stay application is being heard. He, however, referred to the reasonings of the impugned order where the Commissioner had found that glass and glassware manufactured by the applicants would not answer the laboratory glassware but it is correctly classifiable under Heading 70.15. On the contention that the demand was hit by the limitation, the ld. DR points out that the surrendering of the central excise licence was not by the applicants herein but by some other units. Regarding the financial hardship he referred to balance sheet produced by the applicants which shows that there is an amount of over Rs. 23 lakhs due to the applicants from the sundry debtors. The applicants also had a sales turnover which stood Rs. One crore in 1994.

4. We have carefully considered the submissions made. We agree with the ld. DR that the classification of glass and glassware in this case would be a contentious and arguable matter which has to be decided with reference to the detailed examination of the Tariff Headings read with the section notes and chapter notes and also with reference to the nature of the products in question. This is an exercise which can be taken only at the time of hearing the appeal on merits and not at the stage of hearing the stay application which is of an interlocutory nature. They claim that they had not suppressed any facts; it appears that the demand has originated when the officers checked the records.

In these circumstances, having regard to the financial condition of the applicants as reflected in the balance sheet of 1996, we are of the view that a partial pre-deposit of the duty involved will be in order for hearing the appeal on merits. Accordingly, we direct the applicants to deposit a sum of Rs. 11 lakhs (Rupees

Eleven lakhs) on or before 31-7-1997, subject to which pre-deposit of the balance amount of duty and of penalty is dispensed with and recovery is stayed, till the disposal of the appeal.

5. The matter will be listed for ascertaining compliance with this order on 5-8-1997.