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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-23-1997

Reported in : (1998)(100)ELT426Tri(Mum.)bai

Appellant : Mukund Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Application is for waiver of pre-deposit of duty of 69.16 lakhs approximately and penalty of Rs. 69 lakhs.

2. Advocate for the applicant contends that the demand for duty has been confirmed on the finding of the Commissioner that goods described as "foundry fluxes" were during the period January 1991 to 1993, not considered to be inputs in terms of Rule 57A because they have been held to be part of the plant. He says that the goods are in the form of boards and sheets which are used to line the tundish which is a receptacle of molten metal used in the process of making films. He contends that the Commissioner has not taken into account the decision of the Larger Bench of the Tribunal of Union Carbide v. C.C. -1996 (86) E.L.T. 613 which has held parts of items specified in the exclusion clause contained in Explanation to Rule 57A not to be excluded by the clause. He contends that the goods are in the nature of refractory materials, and were used to ensure that the surface of the tundish is protected from the heat of the molten metal, and that the refractory material has been held to be inputs in the decision of this Tribunal in Indian Industries Ltd. v. C.C.E. - 1996 (88) E.L.T. 510. He further contends that the entire

demand is barred by limitation, having been issued in February 1996 for credit taken between 1991 and 1993; applicant had made a declaration as required by law and there has been no mistake or suppression.

3. Departmental representative contends that the goods are refractory material. He says that they have been described as "foundry fluxes" and that the decisions cited by the applicant therefore have no relevance to these goods. He further contends that the question of whether refractory material would be inputs not falling within the excluded category of such inputs has been referred in the Tribunal's decision in [Raipur Alloys & Steel Ltd.] Jaipur v. C.C. -1997 (89) E.L.T. 147. He further contends that in 1996 (87) E.L.T. 42 has held that refractories used for lining on furnace are not inputs. Therefore he says that the goods are refractories and credit has been rightly taken. He contends that the extended period has been correctly invoked for the reason that the applicant did not indicate the nature of the use of the goods.

4. The notice and the order of the Commissioner, have expressly sought to deny credit on the view that the foundry fluxes were part of the tundish. The decision in Union Carbide that parts of items listed as excluded credit will not thus be excluded prima facie applies to the applicant's case. Apart from this, applicant has a strong prima fade case on the question of limitation. There is no finding that it had not declared the inputs and given a tariff heading as was required by the rules, as amplified and explained by various trade notices. We therefore dispense with the deposit of duty and consequential penalty and stay their recovery.

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