Dinesh Greases Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-21-1997

Reported in : (1997)(72)LC589Tri(Chennai)

Judge : V Gulati, Vice-, T Nambiar

Appellant : Dinesh Greases

Respondent : Cce

Judgement :

1. The prayer in the application is for dispensation of the pre-deposit of an amount of Rs. 1,60,678/- demanded from the partnership concern and penalty of Rs. 16,000/- levied on the said firm and also a penalty of Rs. 10,000/- on the Managing Partner, Mr. S. Rajan.

2. The learned advocate for the appellants Shri N. Venketeraman has pleaded that the demand is for the period from April, 1994 to July, 1994, while a Show Cause Notice has been issued on 27.9.1996.

3. He has pleaded the appellants took over the units from the predecessor firm M/s. Ravi Lubricants and continued with the same operations in the same factory. The appellants did not pay the duty for the reason that their clearances had not exceeded Rs. 30 lakhs as envisaged in Notification 1/93. He has pleaded subsequently the authorities found that by reason of clubing of the clearances with M/s.

Ravi Lubricants the clearance from the same factory had exceeded Rs. 30 lakhs and therefore the benefit of Notification 1/93 was not available.

4. He has pleaded that the appellants had filed declaration as required in terms of the Trade Notice No. 33/94 indicating the address and the product manufactured by the appellants. He has pleaded that the appellants had not suppressed any facts from the authorities and that therefore the longer period of limitation could not have been invoked.

On grounds of limitation alone, he has urged the appellants would be entitled to grant of their prayer for dispensation of the pre-deposit of duty and penalties as levied.

5. As regards the financial position, the learned advocate has pleaded that the appellants are a small scale unit and had made a meagre profit of Rs. 80,000/- and each partner got Rs. 20,000/- as their share of the profit. The turnover, as per the balance sheet for the year ending 31st March, 1995, is shown as Rs. 64 lakhs and a gross profit of Rs. 12,42,676/-.

6. He has pleaded that if required a nominal amount may be asked to be pre-deposited the amount as the net profit is only Rs. 80,000/-.

7. Heard the JDR for the department. He has no instructions on the financial position of the appellants.

8. We have considered the pleas made by the learned advocate. We observe the appellants have availed the benefit of Notification 1/93.

It was therefore expected that they had read the notification and also would have been aware of the parameters as are set out in the notification for the purpose of exemption. One of the parameters is that the total clearances from a factory should not have exceeded Rs. 30 lakhs. In the present cast, it was for the appellants to satisfy themselves before clearing the goods without payment of duty as to whether they satisfied this parameter. Their filing of declaration does not prima facie absolve them of their responsibility to ensure that they claimed the benefit after satisfying about the requirements notification. Simple form of declaration has been prescribed by the authorities to obviate the needs for the assessee to have to file long forms, but it is not to say that the assessee has no responsibility to first go through the notification and thereafter to ascertain the facts regarding the availability or otherwise in the context of the parameters of the notification.

9. There is no plea from the appellants that they were either misguided or there was any misunderstanding about the provision of the notification regarding the eligibility criteria of the limit of Rs. 30 lakhs of clearances from a factory by one or more manufacturers in a financial year.

10. In the absence of that prima facie we hold that longer period of limitation has been rightly invoked in the present case. Taking into consideration therefore, the financial position of the appellants as urged before us, we are of the view that the ends of justice would be served if the firm is directed to pre-deposit a sum of Rs. 80,000/- on or before 28.8.1997 and to report compliance on 29.8.1997 subject to which the pre-deposit of the balance amount of duty and the entire penalty levied on the firm and the partner shall stand dispensed with and the recovery stayed pending appeal.