Pee Jay International Ltd. Vs. Commr. of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-11-1997

Reported in : (1997)(94)ELT507TriDel

Appellant : Pee Jay International Ltd.

Respondent : Commr. of Central Excise

Judgement :

1. This is a stay application filed by the applicants for the waiver of pre-deposit of penalty of Rs. 10 lacs and stay of the recovery proceedings.

2. Arguing for the applicants in support of the stay application Shri Hari Om Arora submitted that it was charged that there was mis-declaration of 'Mohair' as 'Scoured Raw Wool'. He submitted that there was no difference between Mohair and Raw Wool and in fact, he submitted in spite of the request made by the party to cross-examine the Chemical Examiner, was not allowed. He said that the orders suffer from denial of principles of natural justice. Since opportunity was not given to the party for cross-examination of the concerned Chemical Examiner and further more the relevant evidence placed by the party has not been considered by the adjudicating authority. Apart from that the appellants have paid the duty amount of Rs. 11,10,572/- including differential duty amounting to Rs. 8,89,250/- voluntarily. Furthermore, the department has not released the full goods since 20% of the goods nearing 10 bales of raw wool valued at Rs. 6 lacs is lying with the Custom.

3. Shri Satnam Singh arguing for the Revenue submitted that Mohair is of a superior quality and it is a clear case of mis-declaration since the appellants have imported Mohair as Scoured Raw Wool. He submitted that the adjudicating authority has discussed the issues taking into consideration of the material evidence on record and accordingly imposition of penalty of Rs. 10 lacs was justified taking into consideration of the value [of] goods under suppression.

4. We have carefully considered the matter and on going though the show cause notice we do not find any specific charge alleging that there was intention to evade _the payment of duty to attract penalty. Apart from the contentious issue whether item in question is Mohair or raw material, taking into consideration that the duty on item in question has already been paid voluntarily and in the absence of mens rea to attract penalty, we are of the view prima facie case is in favour of the party with reference to the penalty. Accordingly, penalty amount is waived and recovery proceedings are stayed till the pendency of the appeal. Application is allowed accordingly.