Progressive Extraction and Vs. Commr. of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/12102

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-11-1997

Reported in : (1998)(60)ECC396

Appellant : Progressive Extraction and

Respondent : Commr. of C. Ex.

Judgement :

1. In this stay application, the applicant is seeking waiver of pre-deposit of Rs. 1,78,200/- and penalty of Rs. 17,000/-. The appellants were issued with a show cause notice dated 29-11-1994 alleging that they had clandestinely manufactured and removed for internal use, various goods of iron and steel such as Hexane Storage Tank, Crude Oil Tank, Water Storage Tank etc. This was noticed by the officers on the visit on 11-12-1993. It is the contention of the appellants that the items manufactured are not goods as these have been manufactured piece by piece and fixed in the underground and that the item is an immovable property. It was also contended that the demands are barred by time, as the show cause notice has been issued after a lapse of time by the department after taking all the details from them.

It is their contention that they were under bona fide belief that the item manufactured by them is an immovable property and hence are not goods. In this connection, they have relied on several judgments both on the plea of merit as well as on limitation.

2. We have heard both the sides in this matter. The aspect pertaining to the item having come into existence as an immovable property step by step or as the goods, has to be gone into in great detail at the time of final hearing. The learned Consultant submitted that they are entitled for Modvat benefit and if the same is taken into consideration, the duty liability is reduced substantially. The learned Consultant further submits that the appellants will be put to severe hardship, if they are directed to deposit the entire amount. They have filed the affidavit in support of their contention.

3. On a careful consideration of the pleas raised by the appellants and taking into consideration the plea of availability of Modvat credit, we are of the opinion that the appellants be directed to deposit a sum of Rs. 50,000 /- towards duty within a period of 8 weeks from today. On such deposit the balance of duty and penalty shall stand waived and recovery stayed till the final disposal of the appeal.

4. The appeal to come up for reporting compliance on 28th January, 1998.