

Star Industrial and Textile Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-23-1998

Reported in : (1998)(75)LC285Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Star Industrial and Textile

Respondent : Cce

Advocate for Pet/Ap. : Mr. Patil Id

Judgement :

1. This is an application for waiver of pre-deposit of duty amounting to Rs. 25.87 lakhs approximately and penalty of Rs. 20 lakhs along with the interest at 20% per annum passed by the adjudicating authority by his order dated 3/21.4.1997. The period involved is 31.1.1988 to 23.7.1991. A show cause notice was issued on 1.9.1993 calling upon the appellants to pay duty on the bought out items and components manufactured by them. It is contended by the learned Advocate for the appellant that by their letter dated 1st November, 1988 they had informed the department about the nature of the transactions, in that on all items manufactured by them,, bought out items in assembled conditions and bought out items supplied loosely which they had not carried out any manufacturing/assembling activity in their premises.

They also specifically stated that they have discontinued payment of excise duty on such bought out items. They also specifically stated that they have discontinued taking modvat credit on such bought out items on which excise duty was paid. It was contended by Mr. Patil Id.

counsel for the appellants that it is not as if the department did not know the nature of the transaction. They were fully aware of the nature of transactions inasmuch as they have been told about two types of transactions viz. bought out items which are assembled in the factory premises, thereafter dismantled in the factory premises and taken to the client's premises and reassembled again. In the flow chart at page 56 reveals not only about the said transaction but also the bought out items which are directly gone to the client's premises. He also specifically pointed out that the entire nature of the transactions have been fully explained to them. Yet, he also invited our attention to the order of the adjudicating authority at page 5 thereof where he has specifically held as follows: These items I find do not actually go into the manufacture of the Jet Dyeing machine but are required only for the erection and commissioning of the Jet dyeing machines.

Mr. Patil emphasises that in view of the fact that the entire material is before the authorities, question of suppression of the information does not arise. He also specifically argued that the department having issued two show cause notices earlier on 29.9.1992 and 12.3.1993 and in adjudication having confirmed the demand and appeals are pending before the appellate authorities and question of invocation of extended period does not arise. He also showed us the balance-sheet of the appellant to show that how the appellants were financially unsound in order to make any payment.

2. As against this Mr. Rao, Id. DR invited our attention to the show cause notice to say that the manufacturing process showed that the bought out items were assembled at the factory and complete machine has come into existence at the factory site itself. He also invited our attention to the certain portion of the balance sheet that financial position of the company is not so dismal as pointed out by Mr. Patil in his argument.

3. We have considered the rival submissions. This is only a prima facie stage in which we have to consider about the pre-payment of deposit of duty and penalty for the purpose of hearing the appeal. The flow chart at page 56 of the paperbook clearly shows two types of transactions entered into between the assessee and his clients. First is where they themselves assembled the items in their factory and dismantled them and taken them to the client's premises, in those cases they pay the excise duty. In respect of another type of transaction where the bought out items directly go to the client's premises, question of payment of excise duty does not arise as specifically indicated in the bottom chart of the flow chart. Taking into account the totality of circumstances in respect of this particular case, we are of the view that prima facie a case has been made out for non-payment of duty and hence we direct that the appellant need not pay any pre-deposit towards duty, penalty and interest and stay their recovery.

4. Our attention has been brought to the detention order dated 5th January, 1998. We hereby order lifting of the above detention order.

The applicant is free to deal with the goods.

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