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Matulya Mills Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-19-1998

Reported in : (1998)(75)LC736Tri(Mum.)bai

Judge : V T K.S., J S Murthy

Appellant : Matulya Mills Ltd.

Respondent : Cce

Judgement :

1. On hearing both the sides the delay in filing the supplementary appeal is condoned as per usual practice since the main appeal had been filed on time.

2. The Id. Counsel Shri M.H. Patil for the applicants submitted that the stay application is for waiver of pre-deposit of sum of Rs. 58,823.46 and the Id. Counsel further pointed out that the dispute is regarding valuation of yarn cleared for home consumption, whether or not the cost of sizing process can be included in the value for the purpose of assessment. Relying upon the Supreme Court judgment in the case of J.K. Spinning & Weaving Mills v. Union of India and Ahmedabad Manufacturing Calico Spinning v. Union of India and respectively, the Id. Counsel submitted that the Supreme Court has held that the yarn which emerges at the spinning stage, duty is payable thereon and it was submitted by the Id. Counsel that the duty payable on the unsized yarn and sized yarn was cleared and hence the lower authorities have wrongly held levy of duty on cost of sizing.

3. We have heard Shri K.L. Ramteke, the Id. DR. We find that the issue is arguable and has to be decided on the basis of the scope of Chapter Note to 52 and 55 of the Central Excise Tariff Act as well as facts of the applicant's case with reference to the facts of the case law cited.

This is an exercise which can be usefully undertaken only when the appeal is taken up for hearing on merits. The Id. Counsel has pleaded that the applicants have been incurring losses over the years and that the deposit of the duty amount would cause them undue hardship. Having regard to this submission we direct that the applicant should pre-deposit a sum of Rs. 20,000/- (Rupees twenty thousand only) on or before 28th February, 1988 subject to which the pre-deposit of balance amount is dispensed with and recovery stayed. The matter will come up on 6th March, 1998 for ascertaining compliance to this order.

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