National Wire Industries Vs. C.C.E.

National Wire Industries Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/13429

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-14-1998

Reported in : (1999)(105)ELT485TriDel

Appellant : National Wire Industries

Respondent : C.C.E.

Judgement :

1. These are stay applications filed w.r.t. the Order-in-Appeal passed by Commissioner (A), Bhopal, dated 23-12-1997.

2. Ld. Representative of the appellants M/s. National Wire Industries stated that this is a common order-in-appeal passed with reference to the orders-in-original relating to five different parties but involving the same basic issue.

3. Out of these the stay applications of two parties namely M/s. Sapna Wire Industries and M/s. Prestige Wires had come up earlier before the Tribunal and they were granted an unconditional stay vide stay Order No. S/32-33/98-B1, dated 11-3-1998 in which each of the parties was directed to deposit Rs. 10,000/-.

4. It was their submission that theirs is a similar case and in view of the order in respect of the above two parties and the pressure of the department they have already deposited Rs. 20,000/- vide challans dated 12-2-1998 and 28-2-1998 albeit under protest. It is therefore their submission that this deposit may be considered as sufficient for the purpose of compliance with Section 35F and

recovery of rest of the amount may be waived.

5. Ld. DR stated that although stay has been granted in the case of Sapna Wires and M/s. Prestige Wires as mentioned by the other side, it was the department's contention that the appellants have no case on merits. The issue relates to interpretation and application of exemption Notification No. 69/86, dated 10-2-1986. By this notification only enamelled wires of thickness of more than 6 mm were eligible to the benefit of the notification whereas admittedly the wires in question in the present case are of different dimensions i.e. less than 6 mm. Therefore he opposes the stay application and would plead that the entire amount in question may be asked to be deposited.

6. Ld. Representative of the appellants pray for similar consideration as shown to other parties against whom the common Order-in-Appeal has been passed on the same issue.

7. We have considered the above submissions. We observe that apperently the facts of the present case are similar to the case of Sapna Wires and M/s. Prestige which has been granted stay by the order dated 11-3-1998 mentioned by the appellants each one of them had been granted conditional stay. The bench had occasion to observe in that case that the merits and demerits will have to be examined in details w.r.t. the facts and the case law at the time of hearing and looking to the totality of facts and circumstances and the prima facie case, and the financial position of the respective units, the order was passed. The present appellants have also claimed that they are an SSI unit suffering from severe financial crunch and have also pleaded hardship in their stay application.

8. In view of the above facts and circumstances it would amount to discrimination if the appellants are not treated similarly. Therefore, in the interest of equity and fairplay following the ratio of the above order of the bench, we grant stay on similar conditions to these appellants and in view of the fact that the appellants have already deposited an amount of Rs. 20,000/-, we waive the pre-deposit of the remaining amount in question and stay its recovery during the pendency of the appeal.

9. Insofar as M/s. Chawla Wire Products is concerned, they have requested that the stay application may be disposed of on merits. This case is also similar to those of the other appellants mentioned above and therefore for the same reasons a conditional stay is also granted in their case and they are directed to deposit Rs. 10,000/- within one month from the date of receipt of the order failing which their appeal would be liable to be dismissed without further notice.

10. The pre-deposit of the remaining amount in question is waived and its recovery stayed during the pendency of the appeal subject to the above compliance.