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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-20-1998

Reported in : (1998)(104)ELT400TriDel

Appellant : Sail

Respondent : Collector of C. Ex.

Judgement :

1. The above three stay petitions were heard together as the issue involved in these stay petitions is the same.

2. The issue is that the stockyards of M/s. SAIL collected duty on despatches from the stockyards to customers. The department found that in certain cases against a particular supplier of material, the stockyards had collected duty on larger quantity of materials. The department alleged that since the duty of certain higher amounts have been collected as duty by the stockyards which was not collected and paid by the manufacturer (M/s. SAIL), therefore higher duty so collected was required to be deposited with the Government under Section 11D. They, therefore, calculated the amount so collected and confirmed the demand.

3. Arguing the stay petition, Shri V. Sridharan, ld. Advocate submits that the amounts so collected are disputed. He refers to the judgment of the Hon'ble Madras High Court stating that in that judgment, the Hon'ble Madras High Court had held that levy is contemplated by Section 11D. However, simultaneously a machinery has not been provided and therefore, levy is stillborn. He submits that

the machinery for collection of additional amount collected as Central Excise duty was not provided by the Government. He submits that this decision of the Hon'ble High Court was further followed by the Tribunal in the case of Sundaram Abex Limited - 1996 (17) RLT 109.

4. The ld. Counsel also refers to the judgment of the Apex Court in the case of M.K. Mohammed Kunhi [AIR 1969 SC 430] stating that in the instant case if the appeal is finally admitted, he will not be able to get the consequential relief in view of the fact that unjust enrichment provisions will come into play inasmuch as the allegation is that duty was collected from the customers. He submits that if the result of the appeal becomes nugatory, the Tribunal has got inherent power to grant stay in such matters. On the question whether demand has been raised against M/s. SAIL, ld. Counsel submits that at page 16 of the appeal it has already been stated that the demands have already been raised against Rourkela and Bokaro Steel Plants. He submits that thus for the same quantity of material the demand has been raised twice. He, therefore, prays that pre-deposit of duty and penalty covered by these stay petitions may be waived.

5. Opposing the request for waiver, Shri P.K. Jain, ld. SDR submits that the case of Eternit Everest Limited - 1997 (89) E.L.T. 28 (Madras) relied upon by the applicant was examined and it was found that the Hon'ble Madras High Court covered a dispute about the amount collected whereas in the instant case, he submits that the receipts are not in dispute, therefore, the decision of the Hon'ble Madras High Court is distinguishable.

6. On the question that demands have been raised twice on the same amount of goods, the ld. SDR submits that M/s. SAIL has got more than two factories and even according to the applicant, the demands have been raised only against two factories and that the records did not show to what extent the demand in the instant case is covered for the period already raised against the manufacturer. He further submits that since the demand against the manufacturer is yet to be confirmed, therefore, no relief under Section 35F can be given and that it can be done only at the time when the appeal of the manufacturer comes up.

7. The ld DR submits the applicant has not claimed any financial hardship, therefore, the applicant should be asked to deposit the entire amount of duty and penalty. He, further submits that since the amount was collected by the applicant five or six years back, there is no reason why they could not deposit the amounts immediately.

8. Heard the submissions of both sides. We are concerned with the waiver of pre-deposit of duty and penalty under Section 35F. In the instant case, the applicant has submitted and relied upon the decision of the Hon'ble Madras High Court stating that this decision of the Hon'ble High Court of Madras was further followed by the Tribunal in the case cited above. In the instant case, we find that the duty has been collected on the goods received in excess, therefore, the Central Excise duty should be collected from the manufacturer who had supplied larger quantity of goods than One stated in the gate passes. We also note from the memo of appeal that certain demands have been raised against the manufacturer. Thus if at all the applicants are directed to deposit the duty and penalty then it will be asking them to pay duty twice. Having regard to this fact that it will be a demand of duty on the same goods twice and also having regard to the fact that the Hon'ble Madras High Court has ruled that there is no machinery provided for calculation of duty levied under Section 11D, we dispense with pre-deposit of duty and penalty and stay recovery thereof during the pendency of the appeal. The stay petitions are disposed of in the above terms.