Shree Laxmi Textile Processors Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-08-1998

Reported in : (1998)(79)LC329Tri(Mum.)bai

Judge : K Venkataramani, Vice-, J S Murthy

Appellant : Shree Laxmi Textile Processors

Respondent : Cce

Judgement :

1. The applications are for dispensing with the pre-deposit and stay of duty amount of Rs. 33,55,355 and a penalty of Rs. One lakh on applicants Shree Laxmi Textile Processors and penalty of Rs. 10,000/- on its Managing Director Shri Shailesh Sarvaiya and Rs. 5,000/- on the other applicant M/s. Ganaraya Transport.

2. Shri M.H. Patil, the Id. counsel appearing with Shri Arun Metha, the Id. counsel submitted that in this case the applicants M/s. Shree Laxmi Textile Processors are manufacturing alcohol which is dutiable under sub-heading 1505 of Central Excise Tariff Act and industrial fatty acid which is exempted and falling under the same Tariff heading. Show cause notice has been issued in this case on 5.9.1996 for the period 1.9.1993 to 28.2.1996 on the ground that the applicant Shree Laxmi Textile Processors and M/s. Shell Corporation, of which the applicant Shri Shailesh Sarvaiya is the proprietor, as well as another firm Bhakti Petro Chem Industries, which is an HUF, where the applicant Shri Shailesh Sarvaiya is the Kartha, are to be clubbed together so far as their clearances are concerned, and in such an

event the value of clearance comes above Rs. 30 lakhs, and the applicant has to take out a Central Excise licence and paid duty on the goods cleared. M/s. Shell Corporation is having trading activity in waxes, and the other firm Bhakti Petro Chem Industry is dealing in Bees wax. The department has held that the duty is demandable by taking all these units as one and the same manufacturer. The Id. counsel pointed out that the applicants have not been given adequate opportunity to file their reply to the charges in the show cause notice. They had repeatedly asked for the basis on which the duty demand has been calculated in the annexure to the show cause notice. They have not been supplied with the work sheet on the basis of which the demand figures to the annexures to the show cause notice has been incorporated. The Id. counsel further submitted that the Commissioner has not considered various submissions made by them, such as that the activity of remelting and mixing of waxes done in the premises will not amount to manufacture, and also that the department has clubbed together the dutiable items as well as the exempted items in calculating the value of clearances whereas the value of clearances of the exempted items has to be excluded as per the Notification No. 1/93. The applicant has specifically sought for a personal hearing only after they were supplied with full documents on which the department calculation has been made. Without such an opportunity being given, the case has been adjudicated. Financially, the applicants will find undue hardship to deposit the amount because according to their balance sheet ending 31.3.1997 they have suffered a loss of Rs. 33 lakhs.

3. Shri A.R.S. Kumar, the Id. DR for the Revenue referred to the enclosure to the show cause notice which clearly indicates the basis on which the duty demand is calculated which is their own invoice.

Therefore, there is full disclosure to the department to enable them to furnish their defence. It was further pointed out that in the declaration filed by Shree Laxmi Textile Processors for the year 1992 also they have failed to declare the existence of other units in the same premises and the unit Shell Corporation was on investigation found to be nonexistent at the Dombivli address and its sales tax registration was of a different location. The Commissioner in the adjudication order also referred to various other pieces of evidence to indicate that in fact the real manufacturer was Shree Laxmi Textile Processors.

4. We have carefully considered the submissions. We find that the major issue is the clubbing of clearances of the 3 units and whether in reality there was only one unit manufacturing the goods or not? This is matter of appreciation of evidence and it is not permissible prima-facie at the stay stage. The other points raised are all arguable and no prima-facie view could be taken thereon. Therefore, for the purpose of hearing the appeals on merits, having regard to their financial condition as submitted before us, we direct the applicants Shree Laxmi Textile Processors to deposit a sum of Rs. 5,00,000/- (Rupees Five lakhs) on or before 31.8.1998 subject to which pre-deposit of the balance amount of duty and penalty amounts by all the applicants is dispensed with and recovery is stayed.