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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-01-1998

Reported in : (1998)LC290Tri(Mum.)bai

Appellant : Duphar Interfran Ltd.

Respondent : Commissioner of Customs

Judgement :

1. As we find that the matter has to be remanded back to the original authority, we grant stay and take up the appeals for disposal. The delay in filing the supplementary appeal, being procedural, the same is condoned.

2. The appellants herein availed of exemption under Notification No.64/79, dated 6-3-1978 and Notification No. 20/93, dated 28-2-1993 in respect of their imports of two consignments of chemical materials through Mumbai Customs House which they cleared on 9-9-1993 on furnishing bond in terms of the notification. The notification stipulates that the exemption under the notification can be granted on condition that the importer furnishes an undertaking to the effect that the imported goods shall be used for the purpose specified in the notification against each item viz. for the manufacture of bulk drugs indicated in the notification. The other conditions are that an account of the said imported goods received and consumed in the factory shall be maintained by the manufacturer in the manner specified by the Asstt.

Collector of Customs and that the manufacturer shall produce the extract of such account duly certified by the manufacturer evidencing receipt of the said imported goods in the premises of the factory within a period of 3 months from the date of importation or such extended period as the Asstt. Collector may allow. In these cases, the jurisdictional Asstt. Commissioner of Customs issued orders enforcing the bond on the ground that the appellants have failed to produce consumption certificate within the stipulated period of the bond. The orders of enforcement of the bond were challenged in appeal and the Commissioner (Appeals) in the combined impugned order has upheld the Asstt. Commissioner's orders and held that the enforcement orders requiring the appellants to pay the differential duty in terms of the bond are correct in law.

3. Shri M.H. Paul, the ld. Counsel appearing with Shri Arun Metha, the ld. Counsel submitted that there were compelling circumstances due to which the appellants could not furnish the necessary extracts of the receipt and utilisation of the imported material including the adverse marketing condition of their goods. Therefore, they could not effect the utilisation within the stipulated period. However, much before the orders of enforcement in these cases they had furnished the certificate of consumption duly endorsed by the jurisdictional Supdt. of Central Excise to the Customs House. The Asstt. Commissioner, however, had not given due consideration to the evidence produced and enforced the bond.

4. Shri A.R.S. Kumar, the ld. DR for the department pointed out that the very basis of the exemption is the certificate regarding usage of the imported material and in the absence of timely submission of such evidence, the enforcement of bond is correct.

5. We have carefully considered the submissions. The Notification itself gives discretion to the Asstt. Commissioner to grant further extension of time for submission of extract of account regarding receipt and utilisation and in the face of the appellants' submission that they did ask for extension of time, it is felt, in the interest of justice, that they be given an opportunity to establish their case and the genuineness of their reason for delayed utilisation and also for the Asstt. Commissioner to satisfy himself regarding the contents of certificate submitted by

them. We note in this context, that no hearing has been granted to the appellants in these cases which should have been extended to them especially in view of the fact that they have written to the Asstt. Commissioner seeking extension. Therefore, the impugned order is set aside and the appeals are remanded to the jurisdictional Asstt. Commissioner of Customs for determining the eligibility to exemption de novo after hearing the appellants in the matter and considering the evidence that they have produced regarding the receipt and utilisation of the imported material in terms of Notification Nos. 64/79 and 20/93.

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