

Yuil Measures (i) Ltd. Vs. Commissioner of Customs

Yuil Measures (i) Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/14094

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-11-1998

Reported in : (1999)(105)ELT181TriDel

Appellant : Yuil Measures (i) Ltd.

Respondent : Commissioner of Customs

Judgement :

1. This is a Misc. Application filed by the applicant company for modification of the Stay Order No. S/262-63/98-NB, dated 23-4-1998.
2. Arguing the Misc. Application Shri J.M. Sharma, Id. Consultant submitted that from the date of passing of the order the financial condition of company has further deteriorated. He submits that the applicant had taken up the matter with their Bank and the Bank refused to grant them any advance against hypothecation of the raw-materials etc. He submits that in the meantime BIFR has also declared the company as a sick unit and that the rehabilitation etc. of the unit is under consideration. The Id. Consultant also refers to a decision of the Delhi High Court in the case of Lakshmi Cement v. CEGAT, 1995 (75) E.L.T. 474 (Delhi) wherein the Hon'ble High Court had held as under :- "4. In the instant case, admittedly, the goods are in the custody of the Customs Authority. On this aspect there is no dispute and there cannot be any dispute. If so, the question of making any deposit of the duty levied while filing the appeal could not arise out of Section 129E." 3. He submits that the Hon'ble Delhi High Court while interpreting the provisions of Section 129E specifically ruled that if the goods are under Customs control duty

need not be deposited as a pre-condition for hearing the appeal. The Id. Consultant submitted that this order of the Hon'ble High Court was not cited before the Tribunal at the time of hearing the stay petition. He refers to the adjudication order and submits that the capital goods and the raw-material on which duty had been demanded by the Department have been confiscated. He submits that on confiscation the property vests in the Government and thus the goods are under the control of the Customs authorities. He, therefore, submits that pre-deposit of the amount ordered to be deposited as duty may be waived. The Id. Consultant also submits that since the company was not in a position to borrow any amount from their Bankers on account of the case being under BIFR pre-deposit of penalty may also be waived.

4. Opposing the request for modification of the stay order Shri P.K.Jain, Id. SDR, submits that the word 'control' used in Section 129E means 'control over the goods' before their clearance. He submits that Hon'ble Delhi High Court had dealt with goods which were still lying either at the port or warehouse before their clearance. The Id. SDR submits that in the instant case the goods were cleared for home consumption long before in terms of Notification No. 339/85. He submits, therefore, the scope of the word 'control' used in Section 129E cannot be enhanced to include confiscation and control thereafter over the goods. The Id. SDR, therefore, submits that the case of the present appellants is different from the one dealt with by the Hon'ble Delhi High Court. He also submits that the application is in the nature of Rectification of Mistake and not of modification.

5. We have heard the submissions of both sides. On careful consideration of the submissions made we find that the controversy is only on the word 'control'. According to the Revenue 'control' means Customs control before clearance of the goods whereas according to the petitioner 'control' will include vesting of right to property on confiscation. We note that in the instant case the applicant's unit is a 100% Export Oriented Unit (EOU) based in Noida Export Processing Zone. All the happenings in the Processing Zone, especially in 100% EOU unit are controlled by Customs. It is an extension of manufacture under Customs bond where Customs exercise control all through over every operation in taking out, taking in, the goods. Moreover, in the instant case the very same goods on which the demand has been

confirmed have been confiscated. On confiscation property vests in the Government.

Since it is Government property unless the Government decides to part with this property the question of demand of duty from anyone else does not arise. Moreover, we find that there is a specific provision under Section 125 of the Customs Act which provides for payment of duty if the owner of the goods come forward for redeeming the goods on payment of fine. Looking to all the facts and circumstances, we agree with the contention of the Id. Consultant that duty shall not be deposited in advance under Section 129E of the Customs Act. Looking to the above facts and circumstances, we modify the impugned stay order to the extent that pre-deposit of duty is dispensed with. In so far as the dispensing with the pre-deposit of penalty on the Company is concerned, we find that the question of the case of the company being before the BIFR was taken note of by the Tribunal and that is why perhaps the pre-deposit was only to the extent of 10% of the total amount of penalty imposed. In the circumstances, we do not see any reason to either reduce the penalty or waive the same. In the circumstances, and in the interest of justice we give the appellants a further time of four weeks to deposit penalty of Rs. One lakh on or before 14th September, 1998 and report compliance by 21st September, 1998.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com