

Style Cosmetics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-07-1998

Reported in : (1999)(110)ELT856Tri(Mum.)bai

Appellant : Style Cosmetics

Respondent : Commissioner of Central Excise

Judgement :

1. These applications arise out of a common order of the Commissioner of Central Excise, Mumbai VI, for the waiver of pre-deposit and stay of Rs. 97,25,223/- as duty and penalty of Rs. 1 crore on applicant Style Cosmetics as well as penalty of Rs. 5 lakhs on Smt. Hiramati Madani who is the proprietor of Style Cosmetics. The application by M/s. Madona Agencies is for seeking waiver of penalty of Rs. 1 lakh and by applicant Shri Ratanchand B. Shah, proprietor of Madona Agencies seeking waiver of penalty of Rs. 20 lakhs.

2. Learned Counsel Shri CM. Korde, appeared along with learned Counsel Shri Kantawala for the applicants and submitted that the applicant M/s.

Style Cosmetics manufacture nail polish and nail polish remover and the department's case is that they have suppressed production and clearance and have wrongly claimed exemption under Notification 104/83 and availed of the exemption even when the value of their clearances exceeded Rs. 50 lakhs in the previous financial year. This they have done by suppressing the actual value of clearance by clandestine removal. The department has relied upon the statement

of an employee Smt. Dalvi who had maintained bottle screen printing register and the department has held that all the figures contained therein represent the number of bottles which have been filled with their final product and cleared without payment of duty. The department has also relied upon the entries in a note book maintained by Shri Deepak Madani, son of the applicant Smt. Hiramati Madani indicating sales of the product during the period April 1994 to December, 1994 as well as file containing figures of cash collections during the period April, 1994 to December, 1994. The department has held that these figures in the notebook and the file support the figures maintained in the register for screen printing of bottles and the demand is quantified on that basis. The learned Counsel submitted that the department's approach is not correct because the department has not taken into consideration the fact that certain products are not theirs, like eye-tex, yet they have added to the value of their own clearances. Another error in the quantification of the demand even assuming the basis was correct, the learned Counsel submitted that the rate of bottles per case and the rate of the packed bottles taken by the department is also not correct and if an average of these figures are taken according to the learned Counsel, the value of the clearance yet again be much lower. Another aspect which the department has not considered that the department is without giving any abatement of the duty element from the realisation which reflects cum-duty price. The learned Counsel further pleaded that the applicants could not bring out these relevant aspects before the Commissioner, and that it would be in the interest of justice that they be given an opportunity of a detailed presentation of their case afresh before the Commissioner. Financially, also the learned Counsel pleaded that the appellants have closed their unit since 1996 and their only income is the rent received from the two gallas which they possessed and which have let out and the income as per the income-tax returns of Smt. Hiramati Madani would be Rs. 36,000/- per annum. Therefore it would cause undue hardship to the applicant to pay the duty and penalty.

3. Moreover the learned Counsel also pointed out mat style cosmetics has since deposited an amount of Rs. 5 lakhs towards duty. The applicants are small units and the income Shri Ratanchand Shah, proprietor of Madona Agencies is only around Rs. 70,000/-, but it was pleaded that the pre-deposit of penalty and duty

should be waived.

4. Shri C.P.Rao, the Learned SDR contended that the department's case is based on material evidence, all the documents maintained by the appellants themselves, and the rates of bottles per case, etc. have all been taken from their own documents. Regarding fresh angle to their defence, nothing prevented them from stating their case as such before the adjudicating authority. The learned SDR also pointed out that the statement of Shri Ratanchand Shah who is the power of attorney has confirmed the contents of the file containing the collection figures and all the entry in the note book relating to cash sales maintained by the son of the proprietor as correct. Therefore no prima facie case is made out for dispensing with the pre-deposit.

5. We have considered the rival submissions. We find that the appellants have not presented the case regarding the quantification of the demand even assuming the basis adopted by the department is correct, in the manner which has been done before us, while arguing the stay application. The question of validity of the demand is a matter of appreciation of evidence, and, besides the documentary evidence of certain files and note books maintained by the applicants themselves, there are the statements of the employee and by Shri Ratanchand Shah which corroborates the entries in the documents. Therefore no prima facie case for waiver of pre-deposit on merits can be taken. Learned Counsel also pleaded financial hardship and has pointed out so far the applicant Style Cosmetics has deposited Rs. 5 lakhs and that any further deposit by them can only be out of the meagre income out of the rent that they receive from two galas which had been let out.

Considering these, we direct that the applicant Style Cosmetics should make a further deposit of Rs. 5 lakhs on or before 31st December, 1998.

This is besides the Rs. 5 lakhs deposit they already said to have been made. The applicant is also given the facility of making this further deposit by way of instalments. On complying with this condition, the pre-deposit of balance amount of remaining duty and penalty by all the applicants is dispensed with and recovery stayed. The matter will come up for ascertaining compliance on 5th January, 1999.

