Dipesh Textiles Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-05-1999

Reported in : (1999)(107)ELT34Tri(Mum.)bai

Appellant : Dipesh Textiles

Respondent : Commissioner of Customs

Judgement :
1. Applications are for waiver of penalty imposed, Rs. 2 lakhs on Dipesh Textiles, Rs. 4 lakhs on Hasmukh Deochand Shah, its proprietor, and Rs. 1.5 lakhs on A.I. Lokhandwala.

2. First two applicants are absent despite notice. We have perused the appeals and stay applications and heard Shri M.H. Patil, Advocate for the third applicant. We have also heard the departmental representative.

3. Penalty have been imposed on first two applicants on the ground that they were concerned with the smuggling of 24 packets of Korean yarn valued Rs. 2.57 lakhs, which the Commissioner finds was smuggled. The contention that penalty cannot be imposed on a proprietary firm and also on its proprietor has, prima fade, to be accepted. While the involvement of these applicants is not clearly spelt out in the order, the stay application is also lacking sufficient details as to justify waiver of deposit. There appears to be a prima facie involvement of these two applicants in the smuggling of the goods. Accordingly we waive deposit of penalty by Dipesh Textiles and direct that Hasmukh Deochand Shah should deposit Rs. 1 lakh within

two months from the receipt of this order, the remaining portion of the penalty need not be deposited and its recovery stayed.

4. The only reason for imposition of penalty on the third applicant- is that he is the owner of the godown from which some labels and other items, suggestive of an attempt to show the imported goods as Indian goods, were found. There is no specific finding by the Commissioner that the applicant was involved in the smuggling. The contention on his behalf that he had leased out the premises to Jarawala, who in turn sublet is to another person, has prima facie, to be accepted.

Accordingly we waive deposit of penalty by this applicant and stay its recovery.