

Prince Gutka Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-14-1999

Reported in : (2000)(115)ELT826TriDel

Appellant : Prince Gutka

Respondent : Commissioner of Central Excise

Judgement :

1. In this case, a duty demand of Rs. 61,73,803/- has been confirmed against appellant No. 1 on the ground that they had clandestinely manufactured and cleared Pan Masala from premises at Jawahar Park, Laxmi Nagar. A penalty of Rs. 30 lakhs has been imposed under the provisions of Rule 173-Q of the Central Excise Rules. A penalty of Rs. 10 lakhs has been imposed on appellant No. 2 who is the Managing Director of Appellant No. 1.

2. On hearing Shri M. Chandrasekharan, learned Senior Counsel appearing with Shri Kamaljeet Singh, learned Counsel and Shri H.K. Saran, learned SDR and perusing the records, we find that the case of the Department is based on detailed evidence such as statements of Shri Sunil Khanna who in his second statement, recorded on 16-11-1994 has claimed that the unit where the activity was conducted, belonged to him and not to appellant No. 1 (which has been disbelieved by the Commissioner for the reason inter-alia that in his first statement recorded on 21-10-1994, he did not make the submission of his ownership of the unit at Jawahar Park and that there was no proof of purchase by Shri Sunil Khanna of machineries, etc., found installed at Jawahar Park and statements of

Shri Soman and Shri Babubhai, employees of appellant No.1. The evidentiary value of these statements and also the statement of the purchaser of pan masala will have to be gone into in detail only when the appeal is taken up for hearing; the merits of the matter are debatable and therefore, the appellants cannot be said to have made out a strong prima facie case for waiver of pre-deposit. A sum of Rs. 25 lakhs has already been deposited. We, therefore, direct appellant No. 1 to deposit a sum of Rs. 10 lakhs towards the duty demand within a period of 12 weeks from today and on such deposit being made, the requirement of pre-deposit of balance duty and the penalty shall stand dispensed with their recovery stayed during the pendency of the appeal.

Failure to comply with this direction shall result in dismissal of appeal without further notice. The requirement of pre-deposit of penalty by appellant No. 2 is waived and its recovery stayed pending the appeal. The appeal of M/s. Prince Gutka to come up for compliance on 5th October, 1999.

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