

S.i.P. Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-25-1999

Reported in : (2000)(88)LC396Tri(Delhi)

Judge : R T Lajja, P Chacko

Appellant : S.i.P. Industries

Respondent : Cce

Judgement :

1. This application filed by the appellants is for modification of Stay Order No. 20/99-BI dated 8.2.1999 passed by this Tribunal in Stay Application No. E/Stay/43/99-BI in the above appeal.

2. The applicant filed the appeal against duty demand of Rs. 37,13,374/- on super enamelled copper winding wire and copper scrap and a penalty of an equal amount imposed under Section 11AC of the Central Excises Act, 1944. The applicant also filed Misc. Application No.E/Stay/43/99-BI praying for waiver of predeposit, and stay of recovery, of the above amounts on the ground of very bad financial position. The Tribunal passed the aforesaid order dated 8.2.1999 after hearing both sides and considering the totality of facts and circumstances of the case, staying recovery on the condition that the amounts of Rs. 18 lakhs and Rs. 5 lakhs be deposited towards Central Excise duty and penalty respectively within a period of 12 weeks and making it clear that any non-compliance with the order shall result in dismissal of the appeal without further notice. The applicant

deposited Rs. 5 lakhs on 22.4.1999 in partial compliance with the above condition and subsequently filed the present application praying that such deposit of Rs. 5 lakhs be treated as compliance with the statutory condition for hearing of the appeal, by appropriate modification of the earlier stay order.

3. The grounds stated for such modification of the earlier stay order are, by and large, found to be the same as those stated in the earlier stay application. The present application is accompanied by (unauthenticated) copies of certain documents viz. loan agreement, promissory notes, acknowledgements from the Income Tax Department for the Assessment Years 1997-98 and 1998-99, statements of current account No. 1595 of the applicant from Andhra Bank, Balance Sheet as on 31.3.1997, Trading and Profit and Loss Account for the year ended 31.3.1997 and similar Account for the year ended 31.3.1998. We observe that some of these documents have already been considered by the Tribunal for the purpose of disposal of the earlier stay application.

4. We have heard learned Advocate, Shri J.S. Agarwal for the applicants and learned SDR, Shri R.K. Sharma for the respondents. Learned Counsel for the applicants submits that since the Tribunal has already considered the merits of the case for the purpose of disposal of the earlier stay application, he does not propose to submit anything on the merits of the case for the purpose of the present application. He, however, submits that the applicants have a strong case for waiver of predeposit on the ground of undue hardship. He also cites the following decisions in support of his submission: Premier Trading Co. v. CCE Meerut (d) Bakson Laboratories v. CCE 1991 (18) ETR 790 (T) : 1992 (39) ECR 205 (T) 5. On a perusal of the aforesaid decisions, we find that none of them will be of any help to the applicants for the purpose of modification of the earlier stay order of the Tribunal. This is because this Tribunal had passed the said stay order after considering the merits of the case and the totality of the facts and circumstances of the case for the purpose of the proviso to Section 35F of the Central Excises Act, 1944. In Para 4 of the earlier Stay order, the Tribunal has clearly stated that the applicant has not made out a prima facie case on merits. However, the Tribunal has passed the conditional order of stay by taking into account the facts and circumstances of the case and taking special note of the

submission that the applicants' factory has been lying closed since July, 1997. The question before us is, therefore, whether any new circumstance has arisen subsequent to the date of the earlier stay order so as to warrant modification of that order in favour of the applicants as prayed for.

6. We find that all the reasons stated in the present application and reiterated by the learned Counsel for the applicants relate to periods prior to the date of the earlier stay order. Neither in the present application nor in the submissions of the Counsel for the applicants, do we find any material ground for modification of the earlier stay order of the Tribunal. We further observe that none of the decisions cited by the learned Counsel for the applicants would apply to a situation like the instant one where an appellant moves the Tribunal for modification of an earlier stay order on the same facts and circumstances as those which existed prior to such stay order.

7. The learned SDR submits that the documents produced with the present application being unauthenticated photostat copies cannot be relied on for any purpose whatsoever and that the applicant has not been able to make out a case for modification of the earlier stay order of the Tribunal. He points out that the amount which was directed to be deposited towards Central Excise duty was less than 50% of the total demand of duty and the amount to be deposited towards penalty was only Rs. 5 lakhs out of an amount of over Rs. 37 lakhs. He submits that the Tribunal's direction to make such deposit as a precondition for stay of recovery of the amounts demanded is quite just for purposes of the proviso to Section 35F of the Central Excise Act. We agree with this submission.

8. In the aforesaid circumstances, we find no reason to modify the stay order dated 8.2.1999 passed by this Tribunal in stay application No.E/Stay/43/99-BI. However, for the ends of justice, we are inclined to extend the time for deposit of the balance amount by a period of 8 weeks from the date of pronouncement of this order. Accordingly, the applicants are directed to deposit the balance amount of Rs. 18 lakhs within a period of 8 weeks from the date of pronouncement of order. The case shall be posted for reporting compliance on 30.8.1999.