Deepak Casting (P) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-02-1999

Reported in : (2000)LC622Tri(Delhi)

Appellant : Deepak Casting (P) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The Commissioner of Central Excise concerned vide its impugned order has confirmed the duty liability of Ks. 30 lakhs against the appellant.

The present Stay Petition is for staying the recovery of duty liability. The duty liability is for the period April, 1998 to September, 1998. Further this duty liability has been confirmed by the Commissioner on the basis of actual capacity of the furnace at 9,600 M.T. vide his order dated 26-3-1998 which has since been set aside by the Tribunal vide Final Order Nos. A/554-58/1998, dated 3-7-1998 [1999 (105) E.L.T. 704 (Tribunal)]. By the said Order the Commissioner was asked to redetermine the duty liability in terms of Section 3A(4) of the Central Excise Act, 1944. The Commissioner has not accepted the application Under Section 3A(4) ibid on the ground that after having opted for the compounded levy scheme in terms of 96 ZO the application of Section 3A(4) cannot be resorted to. It is clear, submits the ld.Advocate, that the said Order also cannot survive any longer in view of Tribunal's judgment in the case of Meenakshi Castings reported in 1999 (32) R.L.T. 82. He further submits that Order dated 7th December, 1998 passed by the Commissioner also stands set aside by the Tribunal vide its Final Order Nos.

A/303-307/99-NB, dated 29-4-1999 [1999 (111) E.L.T. 479 (Tribunal)] in the appellants own case. Ld. Advocate, therefore, submits that unless the duty liability is redetermined in terms of Section 3A(4) the duty liability of 30 Lakhs imposed in the impugned order cannot be sustained.

2. He, further, submits that according to his own estimates the appellants have paid duty of Rs. 35,88,232.00 during the period September, 1997 to March, 1998, on the basis of the original capacity determination by the Commissioner which he submits is wrong payment and required to be adjusted in terms of redetermination of duty liability on actual production in view of the Tribunal's aforesaid orders. Ld.

Advocate further submits that during the period September, 1997 to November, 1998 (as per statement at page 137 of the appeal papers) a total duty liability which is payable by the appellants is to the tune of Rs. 36,74,103/- on the basis of actual production. Since they have already paid Rs. 35,88,232/- as mentioned above, duty liability payable by them now till November, 1998 is to the tune of Rs. 86,871. Ld.

Advocate, further, points out that this duty liability has been arrived on the basis of the total duty liability relating to both induction furnace and rolling mill. Appeal before us is only in respect of tine induction furnace. Therefore, duty liability payable will be virtually nil.

3. He, therefore, submits that he has no objection to payment of the aforesaid duty of Rs. 86,871/- and directing the Commissioner to pass a fresh order on the basis of determination of duty liability in terms of Section 3A(4) as directed by the Tribunal in its earlier orders as mentioned above.

4. Opposing the contentions ld. JDR Shri S. Srivastava submits that the issue involved before us in relation to the duty liability on induction furnace is for the period April 1998 to September, 1998. He submits that no doubt in view of Tribunal's judgment in the case of Meenakshi Castings and in view of Tribunal's judgment in the appellants own case dated 29-4-1999, duty liability is to be redetermined in terms of Section 3A(4) ibid but the facts remains that the appellants have cleared the entire production during the period April, 1998 to

September, 1998 without payment of any duty whatsoever. He submits that this is apparent if we read the appellants own figures as given in the Statement on page 137 read with the Statement of payment of duty of Rs. 35,88,232.00 at page 70. He submits that such a position in law cannot be admitted that the clearance of excisable goods are made by a Central Excise Licencee, without payment of any duty whatsoever. Admittedly, duty is payable on their own even on the basis of the actual production as admitted by the appellant themselves. As regards the submissions that the appellants have paid higher duty during the period September, 1997 to March, 1998 and therefore, they were entitled to adjust the same in terms of Section 3A(4) ibid, ld. JDR submits that this is not permissible in the absence of any redetermination by the concerned Commissioner. The appellants themselves cannot adjust the alleged aforesaid excess payment of duty without proper redetermination by the Commissioner in terms of Section 3A(4). Whenever such a redetermination takes place and a lesser liability is determined the appellants would be entitled to the refund, in accordance with law in terms of the said redetermination. The appellants on their own cannot adjust, he again reemphasises this point.

5. He, therefore, submits that he will have no objection if the appellants are directed to pay a suitable sum on account of clearances made by them during the period April, 1998 to September, 1998 and then the concerned Commissioner be directed to redetermine the duty liability in accordance with law.

6. On a query from the Bench to both the sides on the basis of figures given at page 137, they pointed out that the clearances of excisable goods during the period April, 1998 to September, 1998 will involve approximately a duty amount of over Rs. 12 lakhs. Having regard to the over all facts and circumstances of the case including the fact that redetermination of duty on the basis of the actual production is yet to be made by the Commissioner, we direct the applicant to deposit a sum of Rs. 7.5 lakhs within a period of 3 months from today. Compliance with the aforesaid directions shall be ascertained by the Commissioner and on ascertaining of this compliance, he shall determine the duty liability of the appellants in terms of Section 3A(4) ibid, as directed by the Tribunal vide its Final Order Nos. A/303-307/NB, dated 29-4-1999. [1999 (111) E.L.T. 479 (Tribunal) Ld.

Advocate at this stage submits that since the appellants have paid a huge sum of Rs. 35 Lakhs and whereas according to their own estimates the actual duty payable by them on the basis of actual production is far less the amount of duty paid in excess by them from September, 1997 itself be adjusted against the duty liability not paid by them during the period April, 1998 to September, 1998 and they should not be driven to file a refund claim.

Prima facie there is some force in ld. Advocates submission and we leave it for examination by the Commissioner in accordance with law.

Appeal disposed of in the above manner. Since the appeal has been disposed of, Stay petition also gets disposed of.