

Odyssey Video Communications Vs. Air Cargo Complex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-06-1999

Reported in : (2000)(67)ECC65

Judge : S T Gowri, J S Murthy

Appellant : Odyssey Video Communications

Respondent : Air Cargo Complex

Judgement :

1. The application is for waiver of deposit of duty amounting to Rs. 1.27 crores and penalty of Rs. 1.50 crores.

3. The duty has been demanded and penalty imposed, on the conclusion of the Commissioner that the applicant was unable to comply with the terms of Notification 160/92. The notification grants exemption from partial import duty provided that the importer is able to fulfil the export obligation to a maximum of four times on the CIF value of the goods over five years from the date of import. The applicant had imported video recorders and such equipments in 1995-96. The goods were seized in November, 1997 by the department on its view that the applicant had disclosed its inability to fulfil the export obligation. The duty has been demanded, the goods confiscated and penalty imposed on this basis.

4. The contentions for the applicant are that the departments action is premature because five years was available to it to fulfil the export obligation; the failure to

fulfil the export obligation was due to circumstances beyond the applicant's control. It had imported the goods in order to make the tele film serial of the book "Midnight's Children" sold to the British Broadcasting Corporation, but it could not do so as permission to make the film was denied by the Government. The applicant had already completed its export obligation to the extent of Rs. 50.00 lakhs. However, no evidence to substantiate this contention is produced. It is further contended that the applicant is entitled to avail the amnesty scheme issued by the Commerce Ministry with regard to such import according to which it had time up to end of 2001 to complete the export obligation. Financial hardship is pleaded on the ground that the applicant has incurred loss as on 31.3.1999 of Rs. 2.31 crores.

5. The departmental representative points out that the department action was initiated only after the applicant itself informed the Director General of Foreign Trade that it was unable to complete the export obligation within the period specified and asked, initially for extension of time, and later that the requirement of the export obligation be waived. The applicant had also appealed against the response to that letter to the EPGC Committee which also turned down the request. There is no evidence produced to show that it is in a position to fulfil the export obligation within any reasonable period.

The amnesty scheme will not apply to the applicant in view of the provisions in paragraph 4 which excludes cases where an adjudication order has been passed. He disputes the claim of financial hardship on the ground that the applicant has reserves of Rs. 50.00 lakhs and bank balance of Rs. 25.40 lakhs.

6. We are not able to, at this stage, find a prima facie case for the applicant on merits. It is doubtlessly true that the department's action has been initiated before the expiry of five years within which the applicant could complete its export obligation. The fact however remains that the applicant had itself confessed to the licensing authority its inability to complete the export obligation and, on its request, was freed from that export obligation. In its subsequent appeal to the Committee against the condition imposed for release from the export obligation, it has not contended that it was now in a position to complete the export obligation. No such

argument was raised before us. Nor was it contended before us that at any time thereafter the applicant was in a position to complete the export obligation. The fact that the applicant had only completed a small part of the export obligation to the extent of Rs. 50.00 lakhs also has to be taken into account. In this background, it was, prima facie not reasonable for the department to conclude that the applicant was not in a position to, and did not intend to use the imported material for fulfilment of the export obligation, it is in fact, doubtful whether, after the letter of the licensing authority freeing it from the export obligation subject to payment of duty, the benefit of the notification would continue to be available. The fact that the failure on the part of the applicant to fulfil the export obligation might have been due to factors beyond its control is irrelevant for the purpose of duty. We are also not entirely satisfied that the applicant has a case on financial hardship. As the departmental representative points that it has substantial financial reserves and good bank balance.

7. Taking these aspects into account, we waive deposit of the penalty imposed and stay its recovery. We direct the applicant to deposit Rs. 64.00 lakhs towards duty within two months from today whereupon we waive deposit of the balance of duty and stay its recovery.

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