

Afcons Infrastructure Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-15-2000

Reported in : (2000)(93)LC330Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Afcons Infrastructure Ltd.

Respondent : Cce

Judgement :

1. On hearing both sides on the stay application, it appeared that on a preliminary point the main appeal itself could be disposed of. This was done after granting waiver of pre-deposit of duty amounting to Rs. 1,73,03,304/- and penalty amounting to Rs. 1,75,00,000/-. Shri J.M.Patel referred to the appellants reply dated 25.6.1999 to the show cause notice dated 31.5.1999. In this reply the point put forth by the appellants was that the invocation of the extended period under Section 11A of the Central Excise Act, 1944 did not survive in view of the various arguments made in the said letter. The letter concluded with the plea request: We hereby apply to entertain and try the said issue as preliminary issue.

We reserve right to put in supplementary reply in case you do not entertain aforesaid prayer.

3.The office of the Commissioner directed the present appellants who appeared for personal hearing vide letter dated 7.7.1999 in which reference was made to

this letter. The hearing was concluded. The learned Counsel by letter dated 9.8.1999 in acknowledging the fact of hearing made the following statement: The adjudication was restricted on preliminary issue viz : invoking of extended period and hence I made submissions on preliminary issue.

4.The impugned order was thereafter passed. In the impugned order the Commissioner dealt with the submissions made on account of limitation and passed the order.

5. The learned Counsel at the time of hearing before us made the grievance that in a context of this case, apart from the applicability of the extended period, the issue involved would be of the excisability and also dutiability of the contested goods. Referring to the show cause notice he showed that references have been made to these aspects therein. It is his submission that he had not made any submissions on these vital aspects. According to him he had requested the Commissioner to give rulings on the limitation and had reserved the right to make submissions later in case the Commissioners findings on limitation were against the assesseees. It is his submission that in view of the clear submission that the hearing was on a preliminary issue, the Commissioner should have given his rulings and should have given further opportunity for hearing the assesseees case on merits before him.

6. We have considered these submissions. Ready mix concrete is specifically shown in the tariff sub-heading 3824.20 from Budget 1997.

Entry at Sr. No. 51 in notification 4/97-CE dated 1.3.1997 would seem to exempt this product. Shri Patel submits that on the dutiability itself he had strong grounds to urge before the Commissioner but that the Commissioner having passed the final orders where the appellants had requested for preliminary findings, had resulted in the denial of opportunity to present their case before the Commissioner.

7. On perusal and citation of the aforesaid documents, we find merit in this plea. On finding that the impugned order was without providing adequate opportunity to the appellants, we allow the appeal, set aside the impugned order and remand the

proceedings back to the jurisdictional Commissioner for adjudication de novo.

8. Since large amounts are involved, both sides should give priority to the completion of the proceedings. Shri J.M. Patel submits that the assesseees will cooperate.

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