

Pb Traders Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-04-2000

Reported in : (2000)(71)ECC347

Judge : S T Gowri, J S Murthy

Appellant : Pb Traders

Respondent : Commissioner of Central Excise

Judgement :

1. Consequent on the order of the Bombay High Court in Writ Petition 114 of 2000 setting aside the Tribunal's order on the stay application filed by the applicant. Order dismissing the appeal for non-compliance with the stay order is recalled.

3. The High Court has asked the Tribunal to consider the prayer made in the stay application that, even if it was held that duty was payable on the metalised yam manufactured by the applicant, Modvat credit of the duty paid on the metalised filament, out of which the yarn was made, would be available towards payment of such duty.

4. After seeking adjournment twice, the Advocate for the applicant has today produced before us copies of invoice from the suppliers of the goods showing payment of duty on the metalised polyester filament supplied to the applicant. The period for which duty is demanded is 1.4.1995 to 1.5.1998. The summary produced by the Advocate for the applicant shows that after taking into account

two debits, the credit of Rs. 93.84 lakhs approx. could have been earned of duty amounting to Rs. 93.84 lakhs. He has also produced, year wise, copies of the invoices for supply of the goods alongwith summary year wise.

5. We have verified some of these invoices with the original (502 dated 31.7.1995, 52 dated 26.4.1997, 279 dated 29.6.1997 and 253 dated 13.6.1997 of M/s. Garware Polyester Ltd.). We have found the photocopies tallies with the originals, which were produced before us, and the figures of the duty correctly shown.

6. Accordingly, we are satisfied that a prima facie case is made out that the credit was available to the extent of payment of duty. In view of the settled position of law that, where duty is subsequently demanded on goods which earlier have been believed by the manufacturer to be exempted, Modvat credit of the duty paid on the inputs used in the manufacture of the finished goods would be available notwithstanding the procedure of formalities have not been complied with, we waive deposit of the duty demanded and penalty imposed and stay their recovery.

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