

Spic Ltd. Vs. Commissioner of Central Excise

Spic Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/18607

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-05-2000

Reported in : (2000)(121)ELT538Tri(Chennai)

Appellant : Spic Ltd.

Respondent : Commissioner of Central Excise

Advocate for Pet/Ap. : Shri. T. Ramesh

Judgement :

1. The stay & appeal challenges the dismissal of appeal under Section 35F of the Act for non-compliance of interim stay order by Commissioner (Appeals) in terms of final order No. 11/2000 (M-I) dated 10-2-2000.

The Commissioner (Appeals) in his interim order had directed the appellants to pre-deposit the entire duty amount of Rs. 5,45,509/-, on his prima facie findings that appellants had not made out a strong case for waiver of the amounts and that they did not have financial hardship.

2. Ld. Counsel Shri T. Ramesh appearing for appellants submits that the charge against the appellants was that they had not included the wharfage service charges, survey charges and handling charges at Chennai Port. It is his contention that the total charges collected as per the agreement was only sea-freight charges which was deductible from the assessable value of terms of the judgment in the case of CCE, Patna v. Incab Industries Ltd. as in 1999 (33) RLT 515. He contends

that this judgment has not been accepted by Commissioner (Appeals) holding that the issue is distinguishable as it did not pertain to sea-freight charges but it pertained to other expenses as confirmed by the Asst. Commissioner. It is his contention that appellants are liable to duty as confirmed in CIO as all these were subsequent to the removal of goods from the factory gate.

3. Ld. DR. Shri M. Kunhikannan points out that the expenses are in-cludible as held by the Commissioner (Appeals) in para 4 of the OIA wherein he has noted that as per Clause 1.9 on page 3 of the contract it is clearly stated that the date of shipment shall be treated as the date of delivery. If the ex-factory price is Rs. 7,740/- the ex-depot price has to be more and it cannot be less. Hence, Id. Commissioner concluded that the date of shipment only will be treated as date of delivery. Therefore, all the costs that are incurred till the goods are shipped have to be considered as part of the depot expenses and thus only the actual cost of transport viz. Sea-freight paid to the ship can alone be allowed as deduction in terms of Section 4(2). He further points out that they are all pre-shipment costs. Likewise, other expenses viz. wharfage service charges, survey charges and handling charges at Chennai port are required to be added in the assessable value. Ld. DR submits as appellants do not have a strong prima facie case, hence they are required to pre-deposit the amounts valuable, if their appeal is to be considered by Commissioner (Appeals).

4. On careful consideration of the submissions, we notice that the issues are contentious and arguable in nature. Appellants have also pleaded hardship in the matter and they contended that their appeals are still pending before Commissioner. (Appeals) wherein amounts are small and they had pre-deposited amounts while in this case amounts being large they have asked for partial waiver and Id. Counsel during the course of arguments submitted appellants are willing to pre-deposit an amount of Rs. 1 lakh for the purpose of hearing appeal. This offer is accepted. Appellants shall pre-deposit Rs. 1 lakh (Rupees one lakh only) within a period of three months from the date of receipt of this order. On such compliance confirmation of duty is waived and recovery stayed.

5. At this stage, Id. Counsel submits that appeal could be remanded to Commissioner (Appeals) for consideration of matter on merits and that they would produce the compliance report to the Commissioner (Appeals).

6. Ld. DR has no objection for remand of the matter for decision on merits.

7. Considered by consent of both sides, we take-up the appeal and impugned order is set aside and matter remanded to Commissioner (Appeals) who shall accept the compliance report from the appellants and decide the case on merits after giving due opportunity after expiry of the time stipulated above. Thus, the appeal is allowed by remand.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com