

Aar Kay Processors Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-2000

Reported in : (2000)(121)ELT74TriDel

Appellant : Aar Kay Processors

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application for waiver of pre-deposit of duty amounting to Rs. 37,97,418/- and equal amount of penalty.

2. Shri R. Santhanam, Id. Advocate submits that the Govt. of India introduced compounded levy on independent processors. He submits that the applicants were having processing unit but at the same time had taken on lease a unit engaged in the spinning of yarn and weaving of fabrics. He submits that with the introduction of compounded levy, the department collected certain information from the applicants on 15-12-98. He submits that this information led to fixation of compounded levy in spite of the fact that the applicants had proprietary interest in a unit spinning the yarn and weaving the fabrics. He submits that the applicants filed a letter on 31-12-98 to the department. He submits that in this letter, the appellants had clarified the position that "Since we are having proprietary interest in a factory named and styled as M/s. Aar Kay Weaving Factory, Prop.

M/s. Aar Kay Processors, situated at Phatak No. 22, Islamabad near Krishna Mills, Amritsar and these woven grey fabrics are manufactured in our unit, which are

further processed in our unit for processing. We therefore do not fall under the compounded levy scheme as cited above." 3. Ld. Counsel submits that the Commissioner while deciding the issue held that the applicants did not have proprietary interest in the spinning and weaving unit as he was only lessee and therefore the applicants were required to pay duty as an independent processor. He submits that it has been held by the apex court in a number of cases that a lessee has proprietary interest in the lease unit. In support of his contention, he cites and relies upon the decision of the Apex Court in the case of Mysore Mineral v. CIT [1999 AIR SC 3185]. He also submits that the judgment of the apex court in the case, of Na-rang Dairy Production v. CIT [1996 (219) ITR 478] also supports this view. He submits that similar view was taken by the Kerala High Court in the case of Blue Bay Fisheries v. CIT [1987 (166) ITR1] He also refers to the judgment of the apex court in the case of A.R. Krishnan Murthi v. CIT [1989 (176) ITR 417] in support of his contention that lease property can be termed as proprietary interest for the purpose of explanation 3 of Notf. No. 42/98. He submits that the interpretation placed by the Commissioner on the words 'proprietary interest' is incorrect as is evident from the above decision of the apex court. He also submits that there was no stipulation about the demand of duty whereas while passing the order, the Commissioner quantified the demand without putting the applicants to notice. He submits that in view of the decision of the apex court on the question of lessee having proprietary interest, the applicant was not an independent processor and, therefore he submits that duty should have not been demanded on compounded levy basis but on the basis of actual production. He submits that the applicant has already discharged duty on the basis of actual production. He submits that the department has raised two SCNs demanding duty on which no adjudication order has so far been passed.

He, therefore prays that in view of the above submissions, pre-deposit of duty and penalty may be waived.

4. Shri Mewa Singh, Id. SDR opposes the request for waiver of pre-deposit of duty and penalty and submits that in the SCNs the issue was whether the applicant was an independent processor or was in addition to having interest in a unit engaged in spinning of yarn and weaving of the fabrics. He submits that the Commissioner

has rightly interpreted the words 'pro-prietary interest' and correctly held that the lessee did not amount to manufacturer's proorietary interest. He submits that the issue of appellant being an independent processor has been decided and therefore the duty amount was computed. He submits that since the issue of an assesses being an independent processor has rightly been decided, the applicants should be directed to deposit the entire amount of duty and penalty.

5. Heard the rival submissions. We note that an important point of law is involved. We find that the applicant's counsel cited a number of cases in support of his contention that if property is taken on lease, the lessee has proprietary interest. We note that all these cases pertain to the Income-tax Act and shall have to be examined which cannot be done at this stage. We note that in the instant case two SCNs have been issued by the department. The Commissioner has held that the appellant is an independent processor to the others. The SCNs have not been adjudicated so far. We also find that though the counsel pleaded financial hardship yet he could not produce any documentary proof in support of his contention except referring to an affidavit which only shows that the applicant did not have regular income. Counsel also submitted that the factory was closed. Having regard to the fact that in the SCNs, there was no stipulation of quantification, coupled with the fact that two SCNs have been issued only on that issue which are awaiting adjudication, we consider it a fit case for remand. In view of the submissions made before us, we dispense with pre-deposit of duty and penalty and remand the case to the Commissioner concerned to examine the issue afresh. With a view to avoid confusion in the case it will be necessary that the two SCNs already issued for showing cause to the Addl. Commissioner may be adjudicated by the Commissioner himself while deciding the other issues in the case. Having regard to the case law cited and relied upon by the appellant, the Id. Commissioner will pass appropriate order in accordance with law after giving the appellant an opportunity of being heard in person. Stay petition is therefore allowed and the appeal is also allowed by way of remand.