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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-28-2000

Reported in : (2000)(71)ECC576

Judge : S T Gowri, J S Murthy

Appellant : A.M. Kulkarni and ors.

Respondent : Commissioner of Central Excise

Judgement :

1. Duty of Rs. 38.38 lakhs approx. and penalty of Rs. 50 lakhs is required to be deposited by India Containers Ltd.; penalty of Rs. 5 lakhs, Rs. 1 lakh and Rs. 50,000 are required by Alex Rodrigues, Director (Application E/Stay-995/2000) A.M. Kulkarni, Commercial Manager (Application E/Stay-992/2000) and by V.B. Bindoo, Plant Manager (Application E/Stay-993/2000).

2. The assessee imported second/defective waste tin plate and sent it to job worker for manufacture of oval tins to be used for packing tooth powder. It is not in dispute that the tins are made out of plates of thickness 0.24 mm or less. Bill of entry described in consignment sent to the job worker as of thickness greater than this or less e.g. 0.45 mm and less. It is on this basis the Commissioner has held that these could not have been used for the manufacture of this tin and the additional duty of customs paid on them was wrongly taken as Modvat credit. Since the tin were manufactured and cleared he has said that some other consignment of sheets of the required thickness must have been substituted by

these goods.

3. The contention of the advocate for the applicant is that since the goods consisted of scrap/defective waste, they contained sheets of different degree of thickness. The job worker returned to the applicant the sheets of thickness higher than 0.24 mm and credit has been reversed on these sheets. According to him it consists about one-third of the quantity sent to the job worker, and the remaining has been used in the manufacture of the tin. There is no evidence that it has not been so used. There is no reason shown why the applicant should resort to such substitution. Financial hardship is also pleaded on the ground that the assessee has incurred loss of Rs. 58.54 lakhs in 1998-99 and Rs. 42.58 lakhs in 1999-2000. It is further contended that the extended period which has been invoked was not available to the department since the bill of entry in question clearly indicated the thickness of sheets.

4. The departmental representative says that it was up to the applicant to establish that this quantity of sheets which could not have been used in the manufacture of sheets had been returned and reversed credit has not shown.

5. Issues are arguable'. While we agree that in view of the non-standard nature of the goods they could have contained sheets of both of the thickness required and other thickness. Prima facie however it appears to us it was up to applicant to demonstrate that credit had been taken only on the sheets which were used as inputs. This does not appear to have been done completely. On limitation also the issue is arguable, in the light of the fact that the department had not been informed through the Rule 57G declaration or otherwise of the thickness of sheets required for manufacture. We however find a case on financial hardship in view of the loss already incurred. Penalty of Rs. 50 lakhs on the assessee also appears prima facie excessive. Noting that duty of Rs. 4.64 lakhs has also been paid we accept the offer of the advocate for the applicant to deposit further sum of Rs. 10 lakhs within three months from today. Thereupon we waive deposit of the remaining amount of duty and penalty imposed thereof. Compliance on 29.9.2000.