iffco Ltd. Vs. Commissioner of Central Excise

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SooperKanoon Citation : sooperkanoon.com/19043

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-30-2000

Reported in : (2000)(122)ELT848TriDel

Appellant : iffco Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application for waiver of pre-deposit of Rs. 28,71,954/- and equal amount of penalty under Section 11 AC of the Central Excise Act and Penalty of Rs. 1 lakh under Rule 173Q imposed by the Commissioner under the Impugned Order.

2. Shri Laxhman Dev, ld. Consultant, submitted that M/s. Iffco Ltd. manufacutred Ammonia and Urea; that they had filed an application for L6 licence for getting Furnace Oil for generation of electricity and steam; that after processing their application, the Department issued them L6 licence and subsequently CT 2 certificates for getting the Furnace Oil free of duty under Notification No. 75/84-C.E., dated 01.03.1984; that subsequently both the applicants and the Department realised that the Furnace Oil intended for use otherwise than as feed stock in the manufacture of fertilizers does not attract Nil rate of duty but the concessional rate of duty; that immediately on demand they paid the duty for the past six months period in respect of quantity of Furnace Oil brought by them. The ld. Consultant further submitted that the demand is hit by time limit as show cause notice has been issued beyond the period of six months specified in Section 11A(1) of the

Central Excise Act; that as they had not suppressed any fact from the Department nor they had wilfully mis-declared any fact, the larger period of limitation is not invokable.

3. Dr. D.K. Verma, ld. SDR, opposed the waiver of pre-deposit and submitted that the Furnace Oil was not available at Nil rate of duty for use otherwise than as feed stock in the manufacture of fertilisers and as the Appellants have used the Furnace Oil acquired at Nil rate of duty, there was suppression on their part and as such extended period of limitation is invokable.

4. We have considered the submissions of both the sides. It has not been denied by the Department that the applicants have filed an AL6 application alongwith process of manufacture in which it was clearly mentioned that the Furnace Oil is being obtained for generation of steam/electricity. They have specifically mentioned Nil rate of duty also in the application and after processing this application the Department granted L6 Licence and subsequently issued CT 2 certificates for obtaining Furnace Oil. In view of these facts the applicants have made out a strong prima facie case in respect of time limit.

Accordingly, we waive the requirement of pre-deposit of the entire amount of duty and penalty and stay the recovery of the same during the pendency of the appeal.