

Jalani Enterprises Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-07-2000

Reported in : (2001)(74)ECC373

Judge : P Bajaj, B T K.K.

Appellant : Jalani Enterprises

Respondent : Cce

Judgement :

1. This stay application arises out of appeal bearing No. E/2541/2000-D filed by the appellants wherein they have challenged the validity of the Order-in-Original of the Commissioner confirming the duty demand of Rs. 22,78,788 and imposing penalty of Rs. 19,34,240 and of Rs. 5,00,000 on them. The appellants in the stay application have prayed for the total waiver of the pre-deposit of the duty and the penalty amounts.

2. While arguing the stay application the learned Counsel has contended that the classification dispute between the party is already subjudice as the appellants have filed the appeal against the order of the Commissioner (Appeals) confirming the classification of their product Jalani brand "Jaljira" and "Jiron Churn" under Sub-heading 2108.91 and 2108.99 of the CETA and while passing the impugned order in appeal the Commissioner (Appeals) had followed that order of classification and confirmed the duty and penalty amounts on them. According to the counsel, the impugned order confirming the duty and penalty amounts could

not be legally passed on the basis of classification order, which is still subjudice and even appeal against that order filed by the appellants is still pending before the Tribunal. He has also argued that extended period of limitation could not be invoked as there was no suppression of facts by appellants. Therefore, the waiver of the pre-deposit of duty and penalty amounts deserves to be allowed especially when the appellants have a strong prima facie case.

3. On the other hand, the learned SDR while refuting the contention of the counsel has contended that the impugned order of the Commissioner confirming the duty and imposing penalty on the appellants is perfectly valid and no proof of financial hardship has been brought on record.

5. Admittedly the dispute regarding the classification of the product Jaljira and Jiron Churn, between the assessee and the department is still pending as the appellants had already filed an appeal before the Tribunal against the order of the Commissioner (Appeals) regarding classification of their product. The impugned order confirming the duty and imposing penalty has been passed by following that order of the Commissioner (Appeals), by the adjudicating Commissioner. Obviously, the fate of the appeal out of which the present stay application arises depends upon the ultimate decision of the Tribunal in the appeal filed by the appellants against the classification order of the Commissioner (Appeals). Therefore, keeping in view all the facts and circumstances and the fact that the question whether the extended period could be invoked and the penalty under Section 11AC of the Act could be imposed on the appellants, has to be determined on merits, the ends of justice would be met if the appellants are directed to deposit Rs. 12 lakhs (Rupees twelve lakhs only) out of the duty amount of Rs. 22,78,788 and the pre-deposit of the balance duty amount and the entire penalty amount is stayed. Accordingly, the stay application of the appellants is allowed and they are directed to make pre-deposit of Rs. 12 lakhs (Rupees twelve lakhs only) within six weeks from today and on deposit of the same the recovery of the balance duty and the entire penalty amount shall stand stayed, but in case the appellants failed to comply with this stay order, their appeal itself shall stand dismissed without further notice to them.

6. To come up for reporting compliance on 29.12.2000. On the request of the counsel for the appellants, the appeal is ordered to be posted along with the connected appeal No. E/2541/2000-D on 29.12.2000.

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