Jindal Polyester Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-09-2000

Reported in : (2001)(127)ELT296TriDel

Appellant : Jindal Polyester Ltd.

Respondent : Commissioner of C. Ex.

Judgement :
1. The Commissioner of Central Excise has confirmed the demand of duty of Rs. 48,08,428/- and imposed a penalty of Rs. 5 lakhs on the applicants. The demand represents depreciation allegedly claimed in excess by the applicants.

2. Issue to be determined prima facie is the date of commencement of commercial production by the applicants for the purpose of commencement of period of calculation of depreciation. According to the Commissioner commercial production commenced on 29-3-1996 while the department alleges that it was only a trial production on that date and that commercial production began only on 19-7-1996 and that the applicants were entitled to claim depreciation only from 19-7-1996 and not from 29-3-1996.

3. We have heard both sides. There is no dispute that the quantity produced in March, 1996 was exported. The Commissioner has accepted this position but has held that the manufacture in March was only trial production because they had produced only very small quantity of 1.74 MT which cannot be treated as commercial production.

4. We have gone through the Circular No. 27/98, dated 21-4-1998 issued by CBEC which states that period of depreciation would be counted from the date, the capital goods have been put into the manufacturing process in the 100% EOU up to the date they are sought to be cleared to the Domestic Tariff Area. In view of this, we hold that the applicants have made out a prima facie case for waiver of pre-deposit and accordingly dispense with the pre-deposit of duty and penalty and stay recovery thereof pending the appeal.