Sunil Nanda and anr. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-2000

Reported in : (2001)(96)LC355Tri(Delhi)

Judge : A T V.K., P Chacko

Appellant : Sunil Nanda and anr.

Respondent : Cc

Judgement :
1. These are two applications filed by Shri Sunil Nanda, Proprietor of M/s. Poonam Cargo Services, and by Shri Rajeev Malik for waiver of pre-deposit of Penalty amounting to Rs. 5 lakhs each imposed by the Commissioner of Customs (General) under the Impugned Order.

2. Shri L.P. Asthana, learned Advocate, submitted that I.V. Cannula and 3-Way Stopcocks were imported by two importers, namely, M/s. Medisource Agencies (P) Ltd. and M/s. Medisphere Marketing (P) Ltd.; that Commissioner, under the impugned order demanded duty and imposed Penalty on the importers by denying them exemption under the Notification No. 23/98 and imposed penalty on these two Applicants holding that they were under obligation to bring the fact of earlier import of the impugned goods on payment of duty and as such both (of) them were responsible for misdeclaration. The learned Advocate further submitted that there was no misdeclaration at all on their part; that the Appellate Tribunal in the case of CCE, Coimbatore v. Saberwal Surgical (P) Ltd. Notification No. 55/95 to

Scalp Vein Infusion Set holding them as Cannula used in blood vessels; that the Tribunal vide Stay Order No.238-241/2000-B dated 2.11.2000 in the case of Medisource Agencies (P) Ltd. and Ors. has observed that the Applicants therein, who were importers, had made out a prima facie case in view of decision of the Tribunal in Saberwal Surgical's case and the recovery of penalty was stayed; that there is no basis for the finding of the Commissioner that they were under obligation to inform the department that earlier consignments were cleared on payment of duty.

3. Opposing the prayer, Shri K.K. Goel, learned SDR, submitted that the recovery of the duty and penalty was stayed vide Stay Order No. 238-241 /2000-B as the importers had deposited more than 50% of the duty amount. He, therefore, prayed that both these applicants should be directed to deposit part of the amount of penalty imposed on them.

4. We have considered the submissions of both the sides. In view of the observations of the Tribunal in the matter of main importers that they had prima facie case in view of the Tribunal's decision in the case of Saberwal Surgical, supra, we are of the view that no pre-deposit of duty amount of penalty is warranted from any of the Applicants. We, therefore, waive the pre-deposit of amount of penalty imposed on them and stay the recovery of the same during the pendency of appeals.

5. Both the appeals are posted for final hearing on 19th December, 2000.