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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-02-2001

Reported in : (2001)(129)ELT96Tri(Mum.)bai

Appellant : Ansa Polymers Ltd.

Respondent : Commissioner of Customs

Judgement :

1. Since, on careful examination of the records of the case, we find that this matter can be disposed of finally at this stage, we allow the present application for waiver of pre-deposit and proceed to consider and dispose of the appeal itself.

2. The appeal is against order dated 25-8-2000 of the Commissioner of Customs, Kandla. The facts of the case are that the appellants are a unit established in the Kandla Free Trade Zone for the manufacture and 100% export of recycled plastic scrap; that they are entitled to exemption from payment of customs duty on raw materials imported for the purpose of such manufacture under Notification 133/94-Cus., dated 22-6-1994 as amended (subject, of course, to the conditions laid down thereunder); that they imported raw materials for the manufacture of recycled plastic scrap prior to the relevant date (12-5-1998); that there was a fire in their premises on the relevant date and the raw materials were destroyed in the fire; that they intimated the matter to the departmental authorities on 12-5-1998; that the Customs officers conducted a survey in their premises on 12-6-1998 and found shortage of raw materials; that the Revenue, by show cause notice, proposed to recover customs duty on the raw materials so found short, on the

ground that such raw materials which were not used for the purpose intended under the notification were not exempt from duty; and that the party was also sought to be penalised. The show cause notice was contested by the party. The learned Commissioner of Customs posted the matter for hearing on 21-8-2000. On that day, counsel for the appellants made a telephonic request to the adjudicating authority for an adjournment of the hearing, which was declined. The counsel, therefore, by letter dated 21-8-2000 requested the Commissioner for adjournment. The Commissioner, however, proceeded to dispose of the matter on the same day, which resulted in the order impugned in this appeal.

3. We have heard learned Advocate, Shri A.S. Sundar Rajan, for the appellants and learned JDR, Shri J.M. George, for the Revenue. Learned counsel argued both on merits and on the aspect of violation of natural justice. He submits that the destruction of raw materials in fire on 12-5-1998 is not disputed; that the raw materials had been imported with the intention of using the same for the manufacture of final products in terms of the aforesaid notification; that the non-utilisation of the raw materials for such manufacture was beyond the control of the appellants; that the appellants are even otherwise entitled to remission of duty in terms of Section 23 of the Customs Act; and that the impugned order is erroneous. He further submits that the matter was posted for hearing for the first time on 21-8-2000 and that the Commissioner ignored the oral and written requests for adjournment though it was pointed out to him that the matter required careful examination in view of the high stake involved therein. Learned counsel therefore challenges the order as violative of natural justice.

Learned JDR has attempted to defend the impugned order. Nevertheless, in answer to our query from the bench, learned JDR fairly concedes that the request made by the appellants' counsel as per letter dated 21-8-2000 has apparently not been considered by the authority.

4. We have carefully considered the rival submissions. In view of the aforesaid submissions, it appears that learned Commissioner of Customs has passed the impugned order in undue haste without observing the principles of natural justice. It is pertinent to note that the matter was posted for the first time for hearing on 21-

8-2000 and the request for adjournment was the first of its kind. The matter involves high stake. The provisions of the aforesaid notification as well as the relevant provisions of the Act may have to be considered in detail while disposing of a matter of this kind. Therefore, we are of the considered view that the learned Commissioner of Customs should decide this matter afresh in accordance with the principles of natural justice as well as with the relevant provisions of law. We therefore set aside the impugned order and allow this appeal by way of remand, directing the Commissioner to dispose of the dispute afresh on its merits after affording a reasonable opportunity of personal hearing to the appellants. He shall pass a speaking order.