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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-22-1985

Reported in : (1986)(7)LC309Tri(Delhi)

Appellant : Bata India Ltd.

Respondent : Collector of Central Excise

Judgement :
1. By the present application the applicants pray for dispensing with deposit of duty Rs. 7,70,581.91 and penalty Rs. 1 lac. We have heard Shri R.N. Bajoria, Sr. Advocate in support of the application and Shri V. Laxmikumaran, SDR for the respondent in opposition. Shri Bajoria argued that the order of the Collector of Central Excise suffered from several glaring infirmities. The Collector held the applicants liable to duty on cement purchased from market. No finding had been given in respect of Annexure 11 to the show cause notice. Rate of duty applied was with reference to the date of notice and not to the date of removal of the goods. This he submitted was against the decision of the Board in Shabnam Electronics case recorded in 1981 ELT 503. Shri Bajoria argued that in considering dispensing with deposit of duty and penalty under Section 35E not only financial hardship but other relevant factors like merits of the case had to be taken into consideration and that the applicant was in a position to pay that amount was not by itself decisive. In support of these propositions he relied on the following decisions : (I) Aluminium Corporation of India Ltd. v. C.Balakrishnan and Ors. (37 ITR 267); (2) R.D. David and Ors. v.Agricultural Income-Tax Officers and

Anr. (86 ITR 699); and V.N.Purushothaman v. Agrl. Income-Tax Officer and Anr. (ITR 14-)). Shri Bajoria when questioned by the Bench as to what would be the correct amount if the entire case of the department was accepted to be correct taking however note of the glaring infirmity as to rate of duty pointed out by Shri Bajoria during the course of arguments. Shri Bajoria submitted that the amount payable by the applicants would work out roughly to Rs. 4 lacs. On behalf of the respondent Shri Laxmikumaran, learned departmental representative, opposing the application relied on two decisions of the Tribunal, in that of Bata India v. Collector of Central Excise, Calcutta (Order No. 9 to 16/84-D dated 25-1-84) and TELCO v. Collector of Central Excise, Pune (Order No. 131/85 dated 22-2-85). Questioned by the Bench, Shri Laxmikumaran submitted that according to the department's view at the stage of disposing of an application for dispensing with deposit or stay, merits of the case should be gone through and prima facie case looked into. In that connection he also submitted that when the department applies for stay it was itself requesting that it had a prima facie case. Therefore, he submitted that it would not be proper for the department to urge that at the stage of stay application prima facie case should not be looked into at all. About the rate of duty in respect of which grievance is made out by Shri Bajoria, Shri Laxmikumaran submitted that in view of the two recent decisions of the Tribunal holding that in such cases the rate of duty would be governed by the date of removal, he has not much to say. He, however, opposed Shri Bajoria's prayer for dispensing with deposit of penalty. He wanted to address detailed arguments about justification of imposition of penalty of one lac, adding that it was very mild amount considering the facts and circumstances of case.

2. We have carefully considered the arguments advanced by the parties.

We order that applicants pay in cash Rs. 4 lacs within six weeks from today. On such deposit being made, pre-deposit of the balance amount of duty and penalty is dispensed with and its recovery stayed till disposal of the appeal.