**Flowfast Engineers (India) and Vs. Commissioner of Customs (Prev.),**

**Flowfast Engineers (India) and Vs. Commissioner of Customs (Prev.),**

**SooperKanoon Citation** : sooperkanoon.com/24389

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jul-10-2001

**Appellant** : Flowfast Engineers (India) and

**Respondent** : Commissioner of Customs (Prev.),

**Judgement** :

1. The delay of four days in filing the appeal of Ashok Bhatia is condoned.

2. The applications are for waiver of deposit of duty of Rs. 10.05 lakhs approx. by Flowfast Engineers (India), penalty of Rs. 2 lakhs on it and of Rs. 1 lakh each on Manohar Bhatia, Hareshlal Bhatia, its directors, penalty of Rs. 1 lakh on Degmak Engineering Corporation, and Rs. 1 lakh on Ashok Bhatia, partner of Degmak Engineering Corporation.

3. The duty has been demanded, and penalties imposed, on the finding of the Commissioner that the goods imported by Flowfast Engineers, later supplied to Degmak Engineering Corporation, who in turn supplied them to other buyers, had been undervalued. The goods were imported and cleared at the Air Cargo Complex, Mumbai under a bill of entry filed on 29th December, 1994. The show cause notice has been issued by the officers of the Commissioner of Customs (Preventive), who has passed the order impugned in these appeals.

4. The common counsel for all the applicants, except one, relies upon the Supreme Court's judgement in Union of India Vs. Ram Narian Bishwanath 1997 (96) ELT 224 and the Tribunal's decision in 1992 (52) ELT 951 to say that the

demand for short levy of duty in these circumstances should have been issued and adjudicated by the proper officer of the Air Cargo Complex and the Commissioner of Customs (Preventive). Accepting this argument prima facie, we had waived deposit of duty and penalty from Degmak Engineering Corporation and Hareshlal Bhatia in the applications filed in earlier appeals (applications C/80 & 81/2001 in appeals C/35 & 36/2001).

5. Accordingly, we waive deposit of the duty demanded and penalties imposed and stay their recovery.