Commissioner of Customs and Vs. Ashok Iron and Steel Fabricators

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-31-2001

Appellant : Commissioner of Customs and

Respondent : Ashok Iron and Steel Fabricators

Judgement :

1. The application for condonation of delay of 34 days in preferring the above appeal has been explained in the application due to the massive earth quake which took place in Gujarat in January, 2001.

Learned Counsel has no objection to the delay being condoned. We are satisfied that the delay is to be condoned and accordingly allow the COD application.

2. Now we come to the application for stay filed by the Revenue. The Revenue seeks stay of operation of the impugned order passed by the Commissioner (Appeals) who has held that credit availed and utilised by the respondents herein on kerosene wick stove parts prior to 23/07/1996 when such parts were dutiable is not required to be reversed after 23/07/1996 when such parts become exempt from payment of duty. He has also directed consequential relief which results in not only payment of the refund amount but also interest. It is against the payment of interest that the application for stay has been filed.

3. Learned DR submits that there is no legal provision for recovery of interest paid along with the refund claim and if the Revenue succeeds in its appeal there would be no legal method for recovery of such interest.

4. Learned Counsel opposes the prayer for stay on the ground that that there is no reason why the operation of the order of the Commissioner (Appeals) should be stayed.

5. We note that the issue whether credit availed and utilised during the period when the items were dutiable but subsequently came to be exempted has been the subject matter of two decisions of the High Courts. The Allahabad High Court in the case of Super Cassettes Industries Vs. Union of India 1997 (94) ELT 302 (All.) has taken the view that such credit is required to be reversed. This decision has been followed by the larger bench of the Tribunal in the case of Khanbhai Esoofbhai Vs. Collector of Central Excise, Calcutta reported in 1999 (107) ELT 557. We note that in a subsequent decision of the Hon'ble High Court of Kerala in the case of Collector of Central Excise & Customs, Cochin Vs. Premier Tyres Ltd. reported in 2001 (130) ELT 417 a diametrically opposite view has been taken, namely that credit taken for eligible final product which was dutiable on the date of receipt of inputs but came to be exempted latter, is not reversible. The decision of the Kerala High Court is in a reference application on the matter being referred to it by the Tribunal as seen from 1994 (72) ELT 916.

Since conflicting decisions of the different High Court exist, we are of the view that the department has made out a prima facie case for stay so far as it relates to payment of interest to the respondent. We order accordingly.

6. Since as seen from the above, there is a conflict between the two High Court on the issue involved, we place this case for reference to a larger bench of seven members. File to be put up before Hon'ble President for constituting larger bench.