Special Prints Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-06-2001

Appellant : Special Prints Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. In the common stay order (No. 2911-17 dated 18.10.2000) passed on the stay applications inter alia of Special Prints Ltd. and Garden Silk Mills Ltd., the Tribunal in the last paragraph, permitted utilisation by the land and building of "the appellant" subject to the "assessees" giving an undertaking that they will not sell or otherwise part with the land building or any part thereof during the pendency of the appeal.

2. The application by Special Prints Ltd., the assessee contends that it is the owner of only about 30% of the machinery installed in the factory. The rest of the machinery, land and building belong to Garden Silk Mills Ltd. Its counsel however points out that Garden Silk Mills Ltd. has also, in pursuance of the stay order, given an undertaking to the Commissioner not to dispose of the existing land, building, plant and machinery during the pendency of the appeals.

3. It is evident that the Tribunal's order in this regard was passed in ignorance of the correct position regarding ownership, which was not pointed out to is.

4. Undertakings that the applicant and Garden Silk Mills have given will obviously be invalid for the plant, building and machinery that it does not own. An

undertaking by a person not to dispose of land and building, plant and machinery which he does not own but somebody else own is unenforceable and invalid. The counsel for the applicant tells us that the land, building and machinery which does not belong to it, has been leased to it by Garden Silk Mills Ltd., and that the parties wish to terminate the lease. Since, on the termination of the lease, these properties would belong to Garden Silk Mills ltd. and are covered by the undertaking that it has given, there should be no objection to the termination of the lease. We are issuing this clarification on the plea made by the counsel for the applicant that the Commissioner objects to the termination of the lease.

5. That undertaking given to the Commissioner by Garden Silk Mills refers to the "existing land, building, plant and machinery as recorded and reflected in the statutory and/or official books of the accounts of the company." We further clarify, on the request made by the counsel for the applicant, that the undertaking ordered by the Tribunal would only cover that land, building and machinery which the commissioner has ordered to be confiscated. That would be the factory where the goods that are the subject matter of this order were manufactured, the machinery in that factory, and the land or plant that factory is not held.