

Blue Star Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-08-2001

Reported in : (2002)(100)LC394Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Blue Star Ltd.

Respondent : Cce

Judgement :

1. We waive the pre-deposit of duty of Rs. 75,45,059/- confirmed against the applicants herein on the ground that they have cleared modvat inputs as such without payment of duty and penalty of Rs. 75,00,000/- imposed upon them and stay recovery there of and proceed to dispose of the appeal itself with the consent of both sides.

2. The contention of the appellants is that principles of natural justice have been violated in as much as the documents relied upon in the show cause notice viz. RG 23A Part I register, goods receipt note and goods receipt register were not supplied to them and further the order suffers from violation of principles of natural justice for the reason that they were granted personal hearing by one Commissioner and the order has been passed by another Commissioner. Further, they submit that demand is barred by limitation since the audit report in 1992 itself had pointed out that the practice of clearing modvat inputs without payment of duty was impermissible and these documents were available with the Excise

Authorities and yet the notice for the period 12.7.1990 to 29.3.1994 was issued only on 31.7.1995. Lastly, they submit that out of the total duty demand, at least the demand of approximately Rs. 43 lakhs is not sustainable because they did not avail the modvat credit on all the inputs since the source for receipt of inputs varies as these items were procured either through SSI exempted source or from open market without duty paying documents. They also submit that the rate of duty has been applied wrongly and although they have raised the plea before adjudication in their letter dated 6.11.1997, the order does not record any finding on this submission.

They, therefore, pray that the matter may be sent back for fresh decision to the Commissioner.

3. The Id. Departmental Representative reiterates the findings of the Adjudicating Authority.

4. The submission of the appellants that the documents relied upon ,in the notice were not supplied to them is not controverted by the Revenue. There is also nothing in the impugned order to show that all the documents relied upon in the notice were supplied. Their contention that they were not heard by the Commissioner who passed the impugned order has also not been controverted. Therefore, it is a fit case for setting aside the impugned order and remanding the case back to the jurisdictional Commissioner for fresh orders after hearing the appellants. We order accordingly. The documents relied upon are directed to be supplied to the appellants within a period of two months from the date of receipt of this order. The appellants shall thereafter file their reply within one month from the receipt of the documents.

The Commissioner shall hear the appellants within a month of receipt of their reply and pass orders as expeditiously as possible.

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