Devidayal Industries Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-06-2001

Appellant : Devidayal Industries Ltd.

Respondent : Commissioner of Central Excise,

Judgement :
1. The application is for waiver of deposit of total Rs. 40,57,774.72 and penalty of Rs. 5 lakhs.

2. Applicant did not appear nor was represented on 4.10.2001 the date of earlier hearing, or today. No request for adjournment is also made.

We have therefore read the stay application and heard the departmental representative.

3. In his order, the Commissioner has remanded for consideration afresh by the Assistant Commissioner three out of the five grounds on which duty was demanded. He has confirmed the liability to duty on the other two grounds. These are, first thing, that the applicant took modvat credit of the duty on the basis of original copy of invoices and not as prescribed by law on the duplicates. Duty on this score comes to Rs. 26.32.363.74. The second is that the applicant took credit of duty totalling Rs. 5.31 lakhs on invoices which were not issued to the applicant.

4. The stay application does not really address these grounds and emphasizes that the Commissioner (Appeals) did not hear the appellant before him. The

Commissioner (Appeals) recorded that the applicant did not turn up before him for hearing on three occasions, which he specifies. We do not prima facie therefore find any merit on this ground.

5. Prima facie the demand for duty or Rs. 5.31 lakhs will have to be sustained as it has been taken clearly in contravention of the provisions of the law. The demand for the remaining duty is also based upon the provisions of the rules; however it will have to be seen whether the act of taking credit on the original copy of invoice was entirely impermissible. The Commissioner (Appeals) himself records the clarification of the Board that such credit should be taken on permission from the Assistant Commissioner. Having regard to these aspects, we think that a deposit of Rs. 15 lakhs towards duty and penalty would be appropriate. On deposit of this amount within a month from the receipt of this order, we waive deposit of the remaining duty and penalty and stay their recovery.