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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-03-2001

Reported in : (2002)(145)ELT221Tri(Mum.)bai

Judge : J Balasundaram, S T S.S.

Appellant : Sarthi Textiles

Respondent : Commissioner of Cen. Excise and

Judgement :

1. The above application for waiver of pre-deposit of duty of Rs. 11,00,555/- and penalty of equal amount arises out of the order of the Commissioner of Customs, Surat who has confirmed the duty demand on clandestine clearance from the applicants' EOU to DTA. It is the contention of the ld. counsel for the applicants that clearances to DTA were with the approval of Development Commissioner, Kandla Free Trade Zone and that being so, the judgment of the Tribunal in the case of Winsome Yarns Ltd. v. CCE, Chandigarh (2001 (94) ELR 457) which held that in the case of clearance from 100% EOU to DTA, although the measure of collection of duty may be under the Customs Act, the nature of duty required to be paid by 100% EOU is Central Excise Duty if good are cleared to any other place in India will apply. The next submission of the ld. counsel is that the applicant did not import any raw materials but procured them indigenously and hence the question of levy of customs duty does not arise. On financial hardship, it is his submission that although the unit started in the year 1999, due to hardship they had to close down their unit in February 2001 and therefore, they would be put to hardship if

they are directed to pay any amount of duty or penalty.

2. Shri Sarkar, the ld, departmental representative opposed the prayer contending that the decision cited supra by the ld.counsel does not prima-facie cover the present situation where is a clear finding of illicit clearance of goods to DTA. He further submits that the Commissioner has also found that the raw materials were procured by the applicant from other 100% EOU, hence justifying the customs duty.

3. We have carefully considered the rival submissions. Prima-facie, the decision relied upon by the ld.counsel does not come to the aid of the applicant as that decision is applicable to legitimate clearance from 100% EOU to DTA and in this case not only is the charge of clandestine removal bared on shortages but also it is supported by the admission of the proprietor of the applicant's unit. Further, the Commissioner has given a clear finding regarding procurement of raw materials from other 100% EOU. Having regard to these factors and also the plea that the unit has been closed down, We direct pre-deposit of Rs. 5 lakhs (Rupees Five lakhs) towards duty and on such deposit being made within a period of eight weeks from today, the requirement of pre-deposit of balance duty and the entire penalty shall stand dispensed with the recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of stay and rejection of appeal without prior notice.

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