

innlink Systems Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-18-2001

Reported in : (2002)(80)ECC425

Appellant : innlink Systems

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application for waiver of pre-deposit of Rs. 24,32,734.90 and penalty of equal amount imposed upon the applicants herein. The duty demand arises as a result of Commissioner's holding that the applicants manufactured goods falling for classification under Heading 9032.11, i.e. Thermostat, rejecting the applicants claim that they manufacture different types of Guest Room Control System falling under CETA 8537.00 and parts thereof falling under CETA 8538.00. It is contention of the appellants herein that the impugned order has traveled beyond the Show Cause Notice inasmuch as, while the notice recognises that the appellants manufactured different types of Control Systems for Guest Rooms for Hotels, etc, the order proceeds on the basis that only one type namely, Thermostat Control System has been manufactured during the period in dispute. It is his further contention that the language of Heading 8537.00 squarely covers the product in dispute and it is further submitted that the demand is partly barred by limitation, since the description/declaration of the goods has not been found to be in any way different from what the goods were actually held to be by the Adjudicating Authority and wrong classification claimed by the appellants does not amount to

suppression, so as to warrant invoking of the extended period of limitation. The applicants plead financial hardship pointing out that their factory has been closed for over 1 year.

2. The prayer for waiver of pre-deposit is opposed by Ld. D.R., who reiterates the findings of the Commissioner and also draws out attention to the fact that while the Show Cause Notice went on the basis of the applicants' submission regarding the manufacture of different types of Control Systems for Guest Rooms, that was found by the Commissioner that this was wrong and that they were manufacturing only 1 variety of the Control System namely, Thermostat system.

3. We have carefully considered the rival submission advanced before us. In view of the prima facie submission that different types of Control Systems were being manufactured by the applicants, which is also borne out by the Show Cause Notice and also having regard to the prima facie acceptance of the submission regarding non-availability of the extended period of limitation to the Department, we direct pre-deposit of Rs. 4 lakhs out of the total duty demand within a period of 8 weeks from today and on such deposit, the requirement of pre-deposit of balance duty and penalty shall stand waived and recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without further notice.

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