Central Pulp Mills Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-25-2002

Reported in : (2003)(151)ELT704Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Central Pulp Mills

Respondent : Commissioner of Central Excise

Judgement :

1. A sum of Rs. 1,56,592/-has been paid towards duty. The application has been filed for waiver of deposit of the remaining amount of duty of Rs. 52.80 lakhs approx. and penalty of Rs. 54.37 lakhs approx.

3. The duty has been demanded and penalty imposed on the finding of the Commissioner that the waste that arises in the applicant's factory in the course of manufacture of paper referred to as "broke" is liable to duty under Heading 4702 as pulp and paper waste. Counsel for the appellant relies upon the decision of this Tribunal in Sri Venkatesa Paper and Boards Ltd. and Ors. v. CCE - 2000 (90) ECR 526. In this decision, the Tribunal has held that broke was not marketable and hence not excisable.

4. The counsel for the applicant contends that the Commissioner has not established the marketability of the broke that the applicant manufacture, merely says that because it was being used by the applicant it was marketable.

5. The departmental representative echoes the view of the Commissioner.

However, the fact that the applicant used broke in its factory does not by itself establish (prima facie) its marketability. It was for the department to show that the broke was capable of being bought and sold and prima facie it is not done so. The fact that the Tribunal in its earlier order has found the same commodity not to be marketable also goes in the applicant's favour.

6. Therefore, we waive deposit of the duty and penalty and stay their recovery.