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Grasim Industries Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-2002

Reported in : (2002)(82)ECC202

Judge : S T G.R., P Bajaj

Appellant : Grasim Industries Ltd.

Respondent : Cce

Judgement :

1. Arguing the Stay petition for waiver of pre-deposit of duty amounting to Rs. 25,71,946 and a penalty of an equal amount Shri A. R.Madhav Rao, learned Counsel submits that the applicants are engaged in the manufacture of yarn and man-made fabrics; that they were transporting yarn and fabrics to godown of the transporter in their own vehicle and charging a sum of Rs. 10/25 per piece. He submits that in addition to this job the applicants also insured the goods against any damage during transit; that Show-cause Notica was issued by the Department proposing inclusion of cost of freight and insurance to the ex-mill price. He submits that the transfer of possession of the goods takes place at the factory gate and hence the factory gate is the place of removal; that the statements on the back of the invoices/purchase orders clearly indicate that the prices are ex-mill price and the date of delivery is the date of despatch; that the sale of the goods is complete at the factory gate; that property in the goods passes to the customer at the factory gate. In support of this contention he cites and relies upon the decision of the Tribunal in the case of Associated Strips Ltd. and Mauria Udyog Limited 2002 (49)

RLT 506 and in the case of Frexton Cables v. CCE 2002 (29) RLT 501. He submits that the applicant had paid duty on ex-mill price at the factory gate and in view of the above submissions there was no question of any differential duty. He prays that predeposit of duty and penalty may be waived.

2. Shri M.L. Bhutalia, learned SDR appears for Revenue and opposes the request. The submits that there are a number of decisions of the Tribunal holding that in such cases property passes to the customer not at the factory gate but at the point where the goods are delivered. He submits that in the instant case the goods are delivered at the transport premises and, therefore, freight charged by the applicant has rightly been included in the ex-mill price. He submits that the goods are insured against damage and, therefore, insurance charges should also be included in the price at the factory gate. He, therefore, prays that differential duty has correctly been demanded and the applicants may be directed to deposit the entire amount of duty and penalty.

3. We have heard the rival submissions. We have also perused some of the case law cited and relied upon by the applicants. We note in the instant case that the applicant has not been able to make out a prima facie case for total waiver of pre-deposit of duty and penalty. We note that there is a dispute about transport charges and the insurance. This needs detailed examination. Looking to the facts of the case we direct the applicant(s) to deposit a sum of Rs. 3.0 lac (rupees three lac) on or before 30.6.2002. On deposit of the above amount the deposit of the balance amount of duty and penalty shall be dispensed with and recovery thereof shall remain stayed during pendency of the appeal.

4. Failure to comply with the above directions shall lead to vacation of the stay and dismissal of the appeal without any further notice.

5. Matter should be listed for reporting compliance and passing further orders on 8.7.2002.

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