

Arvind Singh Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-17-2002

Reported in : (2002)(82)ECC208

Judge : A T V.K., K Kumar

Appellant : Arvind Singh

Respondent : Commissioner of Central Excise,

Judgement :

1. In all these eight applications, prayer has been made to waive the requirement of pre-deposit of Central Excise duty and penalty confirmed by the Commissioner (Appeals), under the impugned Order Nos.

659-666-CE/BPL/2001.

2. Shri Ramesh Nair, learned Advocate, submitted that the issue involved is the excisability of Refrigeration Plant, erected by them out of the machineries and other necessary items purchased from the market; that after completion of assembly, erection and installation of refrigeration plant, the final product emerged in the form of a "refrigerated building" called cold storage which is an immovable property and as such not chargeable to Central Excise duty; that the Appellate Tribunal in the case of Viridi Brothers v. CCE, Indore, 2001 (132) E.L.T. 86 (T) has held that "construction of refrigeration plant utilizing those bought out items is not a manufacturing process wherein any marketable commodity as contemplated by

the Act comes into existence. Finally, he mentioned that the Board under Section 37B Order No. 58/1/2002-CX., dated 15-1-2002 has itself clarified, in consultation with the Solicitor General of India, that refrigeration/air-conditioning plants are in the nature of systems and are not machines as a whole. "They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air-conditioning system as a whole cannot be considered to be excisable goods." We also heard Shri M.P.Singh, learned D.R., who reiterated the findings as contained in the impugned order.

3. In view of the Tribunal's decision in Viridi Brothers, supra, and Board's Circular dated 15-1-2002 issued under Section 37B of the Central Excise Act, all the applicants have made out a strong prima facie case in their favour. We, accordingly, waive the requirement of pre-deposit of entire duty and penalty and stay the recovery of the same during the pendency of the appeals.

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