

G.D. International Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-07-2002

Reported in : (2002)(83)ECC24

Judge : S Kang, a T V.K.

Appellant : G.D. International

Respondent : Cc

Judgement :

1. Applicants filed this misc. application for modification of stay order dated 1.4.2002. The Tribunal, vide stay order dated 1.4.2002, directed the applicants to deposit a sum of Rs. three lakh out of Rs. ten lakh as penalty imposed on the applicants.

3. The contention of the applicants is that they had deposited only Rs. one lakh and as they were facing financial hardship, they were not able to deposit the remaining amount of Rs. two lakh. The contention of the applicants is that they approached the bank for raising loan and their request for raising the loan was rejected. Applicants relied upon the decision of the tribunal in the case of EON Polymers Ltd. v. CCE , where, on showing the financial hardship, the 4. The case of the revenue is that the applicants filed 9 shipping bills for export of ladies skirts, and, on verification, it was found that the applicants declared higher FOB value of the goods with the intention to claim higher drawback. On examination of the goods, it was found that instead of ladies skirts, the applicants tried to export rags.

In these circumstances, the Commissioner of Customs, confiscated the goods and granted permission to redeem the goods on payment of redemption fine and drawback claim was denied and penalty of Rs. ten lakh was imposed. Assistant Collector of Central Excise v. Dunlop India Ltd. and Ors.

held that where matters of public revenue are concerned, it is of utmost importance to realise that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be slightest indication of a likelihood of prejudice to the public interest. The hon'ble Supreme Court in another case in the case of Union of India v. Shree Ganesh Steel Rolling Mills Ltd. 1996 (64) ECR 675 (SC) held that the granting of an unconditional stay may cause prejudice to the other side. It is always advisable that while making interim order, the court should provide adequate safeguards for revenue in the eventuality of failure of the petitioner or appellant. At the interim stage, it may not be possible to say with any definiteness that writ petition or appeal is bound to succeed. The possibility of the writ petition or appeal being dismissed cannot be ruled out at that stage. Therefore, it is always advisable that sufficient safeguards are provided in favour of revenue while making such interim orders.

6. In the present case, the Tribunal, after taking into consideration the facts and circumstances directed the applicants to deposit a sum of Rs. three lakh out of the total amount of penalty of Rs. ten lakh and in view of the facts and circumstances of the case, it does not require further reduction. Therefore, the application is rejected.

7. The Bench asked the counsel whether the applicants are willing to comply with the stay order, so that one more opportunity can be granted to the applicants for deposit of the remaining amount of penalty. Ld.

Counsel answered in negative. In such a situation, when the applicants had not complied with the stay order nor they are willing to comply with the stay order, the appeal is dismissed for non-compliance to the provisions of Section 129 E of the Customs Act.

