Kellog India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-14-2002

Reported in : (2003)(107)LC65Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Kellog India Ltd.

Respondent : Cce

Judgement :

1. The application for waiver of pre-deposit of penalty of Rs. 30 lakhs imposed on the applicants under Rule 57U(6) and Rule 173Q of the Central Excise Rules read with Section 11AC of the Central Excise Act, 1944 arises out of the order of the Commissioner of Central Excise. The duty demand totalling to Rs. 28,77,899/- has already been paid by way of debit of credit and PLA entry.

2. Bulk of the demand, Rs. 27,99,394/- has been confirmed on the ground that the applicants did not properly and fully account for modvat input quantities. Smaller amounts of duty have been confirmed for certain other reasons, namely, that credit had been wrongly availed on trolley bin proper which is not capital goods and the inadmissible credit on this ground is Rs. 25,200/-. Duty demand of Rs. 50,400/- has been raised on quality control samples and a sum of Rs. 2,905/- has been confirmed as duty on unexplained shortages of modvat inputs.

3. Learned Counsel Shri Patil submits that in the absence of any charge that modvat inputs were not duty paid, that they were not used in the manufacture of the applicants' final products, namely, breakfast cereals, (hat the applicants had clandestinely cleared inputs as such, penalty is prima facie not warranted only on the ground of improper accountal or non-accountal. fie therefore prays that the pre-deposit of penalty may be waived and recovery thereof stayed pending the appeal.

4. The prayer is opposed by the learned DR Shri Awasthi, who reiterates the findings of the adjudicating authority and highlights the aspect that there was a deliberate intention on the part of the applicants to not to account fully for the modvat inputs in RG23A Part I. He therefore prays that the applicant may be directed to deposit the entire penalty.

5. We have carefully considered the rival submissions and find prima facie force in the applicants' contention that non-accountal cannot be a ground for denial of credit and imposition of penalty. Keeping this in view and also nothing that the entire duty demand already stands paid we waive the requirement of pre-deposit of the penalty and stay recovery thereof pending the appeal.