

Plastvolta Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-22-2003

Judge : S T Gowri, G Srinivasan

Appellant : Plastvolta

Respondent : Commissioner of Central Excise

Judgement :

1. By the order impugned in this appeal, the Commissioner has confirmed the correctness of the order of the Joint Commissioner, in which duty of Rs. 5,26,926/- has been demanded from the applicant, has been payable on the various processes that it has carried on PTFE tapes.
2. The contention on behalf of the applicant is that it has settled the dues under the Kar Vivad Samadhan Scheme 1998.
3. By application of Sub-section 3 of Section 90 of the Finance (No. 2) Act 1998, order passed under Sub-section 1 shall be conclusive and no matters which are covered by that order shall be reopened in any other proceedings.
4. The notice issued to the firm demands two sums of duty--Rs. 5,26,926/- for the period from 1-4-1992 to 31-3-1994 on the ground that the exemption contained in notification 175/86 and 1/93 would not be available, and also demanded duty of Rs. 58,050/- on goods which were seized on the ground that they had been cleared without payment of duty. The Deputy Commissioner, in his order passed in

November, 1997, confirmed that demand of Rs. 58,050/-, but was silent as to the other demand. An appeal was therefore filed by the department before the Commissioner (Appeals) as regards this amount. The Commissioner (Appeals), by his order passed on 28-1-2000, remanded the matter back to the adjudicating authority. In the meantime, the assessee filed an application for settlement of the dues under the Kar Vivad Samadhan Scheme. By an order passed on 2-2-1999, the designated authority determined the amount payable by the applicant to be Rs. 18,375/- (half of Rs. 36,750/-), being tax arrears. That direction of the Commissioner clearly provides that it will not apply to the amount of Rs. 5,26,926.34, which was pending before the Commissioner (Appeals). The deposit by the assessee on 15-2-1999 of Rs. 18,375/- was made subsequently and therefore clearly in awareness of the designated authority's direction. Against this background, it is difficult to accept the contention of the applicant that the entire is covered by the Kar Vivad Samadhan Scheme. The notice issued to the applicant is for two separate sets of clearances and on different grounds. The amount of tax arrears declared in Form-I did not include the sum of Rs. 5,26,926/-. The Form-IIB containing the advice of designated authority, communicating the amount payable, specifically clarified that the sum under dispute with the Commissioner (Appeals) was not part of the settlement. The applicant has applied for and settled for only the amount payable as a consequence of the adjudicating authority's order.

The larger sum therefore was not in the contemplation of competent authority when the matter was settled under the Kar Vivad Samadhan Scheme. The designated authority has also understood this that prima facie the applicant's contention is acceptable.

5. We therefore direct deposit by the applicant of Rs. 2.5 lakhs within a month from the receipt of the order whereupon waive deposit of the remaining duty and stay recovery.

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