

Roha Dyechem Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-26-2003

Judge : J Balasundaram

Appellant : Roha Dyechem Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The application for waiver of pre-deposit of duty of Rs. 1,75,845/- and penalty of Rs. 20,000/- arises out of the order of the Commissioner (Appeals), Mumbai. The applicants who were availing the facility under Rule 57F(4) of Central Excise Rules cleared partially processed inputs to their job workers for spray drying which is a further process. They mentioned the estimated/expected quantity of yield of dry powder after processing by the job workers on the basis of the calibrated liquid quantity loaded in the tanker for the purpose of reversal of 10% of credit in terms of Rule 57F(6). The actual quantity loaded in the tanker is later mentioned in the challan after weighment. The applicants are alleged to have not followed the proper procedure for clearing the goods inasmuch as they failed to mention the actual weight of the goods before reversing 10% credit and also failed to mention concentration of the liquid sent for job work thus resulting in contravention of Rule 57F(8) and rule 57F(9). For the above reason show cause notice proposing recovery of duty which they failed to adjust under Rule 57F(11) and proposing imposition of penalty was issued. The demand was confirmed by the adjudicating authority, who also imposed the penalty as mentioned above, and his order was

upheld by the Commissioner (Appeals). Hence this application along with the appeal.

2. On hearing both sides I am of the view that a strong prima facie case for total waiver has not been made out particularly in view of the admission as set out in the order of the Deputy Commissioner that there was a short receipt of goods. The question as to whether the method followed, (estimation of weighment) was the correct one in the case of such goods is a question which can be appropriately decided only when the appeal is heard and not at this interim stage. Having regard to the totality of the facts and circumstances I direct pre-deposit of a sum of Rs. 1,00,000/- within a period of eight weeks from today and on such deposit pre-deposit of the balance duty and penalty shall stand waived and recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without prior notice.

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