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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-25-2003

Judge : J Balasundaram, S T S.S.

Appellant : Raju Fabrics

Respondent : Commissioner of Central Excise and

Judgement :
1. The application for waiver of predeposit of duty of Rs. 19,39,591/- and penalty of equal amount arises out of the order of the Commissioner of Central Excise, Surat. The duty demand has been confirmed on the applicants herein who are 100% EOU for the reason that they had contravened the condition of Notification No. 2/95 which provided that: [a] DTA sale should have been allowed by the Competent Authority in accordance with the provisions of sub-paragraphs (a), (b), (c) and (d) of paragraph 9.9 or paragraph 9.20 of EXIM Policy 1997-2002.

[b] The total value of such clearances does not exceed 50% of the FOB value of exports made during the year.

According to the department, although DTA sale beyond the specified limit was permitted earlier, the DTA sale during the period, was not permitted by the competent authority. It is the further case of the department that the total value of such clearances exceeded 50% of the FOB value of the exports made during the year and therefore both the conditions of third proviso to Notification No. 2/95 were not satisfied, but contravened by the applicant.

2. It is the submission of the applicant, who are represented by this Counsel, that DTA permission was obtained by them and they were covered by the decision of the Tribunal in the case of Ginni International Ltd. v. Commissioner of Central Excise, [2001 (47) RLT 412] and Virlon Textile Mills v. Commissioner of C. Ex. [2002 (139) ELT 371 (Tri.

Mumbai.)]. They therefore pray that the predeposit requirement may be waived pending the appeal.

3. The prayer is opposed by the Ld. DR who states that the decision relied upon by the applicants have been correctly distinguished by the adjudicating authority. In the earlier cases there was a valid permission during which the DTA sale took place and in the earlier Notification. In subsequent notification, namely 8/97, there was no condition regarding not exceeding 50% of the FOB value of exports. He therefore submits the case law relied upon by the applicant is distinguishable from facts of the present case and they may be directed to deposit entire duty and the penalty.

4. We have carefully considered the rival submissions. Prima facie the condition of the third proviso to Notification 2/95 does not appear to have been satisfied by the applicants herein. In view of the findings on the aspect of violation of the condition by the adjudicating authority, prima facie case law relied upon by the applicant is distinguishable as in the case of Ginni International Ltd. the Tribunal had held that once Development Commission Export Processing units gave permission to sell goods in DTA up to specified value of goods, Revenue cannot go beyond the permission and dispute it holding that the physical exports and not deemed exports should have been taken into account for fixing limit of such sales, while in the present case the applicants have cleared goods in DTA in excess of 50% of FOB value of exports made. We therefore hold that prima facie case for total waiver has not been made out by the applicant. In the facts and circumstances of the case we therefore direct predeposit of Rs. 5 lakhs towards the duty and such deposit is to be made within 8 weeks from today. On such deposit, predeposit of balance duty and entire penalty shall stand waived and stay recovery thereof pending this appeal.

5. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without further notice.