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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-26-2003

Judge : J Balasundaram, S T S.S.

Appellant : Bee International

Respondent : Commissioner of Central Excise

Judgement :

1. Arguing on the applications for waiver of pre-deposit of duty of Rs. 12,00,146/-, Ld. Counsel for the applicant Shri V. Sridharan submits that the adjudicating authority had confirmed the above mentioned duty payment on photocopier machines cleared by the applicant a 100% EOU to M/s. Indo German Social Service Society, categorizing the clearances under "deemed export" and effect the clearances without indicating the correct assessable value of the goods and without payment of duty by the applicants. The demand was raised by applying the extended period of limitation. The applicant filed an appeal alongwith an application for waiver in terms of Section 35F of the Central Excise Act, 1944 before the Commissioner (Appeals), who directed pre-deposit of the entire amount and the applicant applied for modification of stay order, which application was also dismissed and the appeal of the assessee was dismissed for non-compliance with the pre-deposit direction. The plea of the applicant is that although they had throughout taken the point that demand was barred by limitation as the fact of clearance of the goods without payment of duty based on the Circular of the Ministry of Commerce dated 05/05/78 was not considered by the Commissioner

(Appeals) at the time of directing pre-deposit. He takes us through relevant document to show that the applicant had relied upon the circular and he stated that the document GP-2 was cleared under deemed exports, covered by the relevant Ministry of Commerce's Circular. We find that the GP-2 have been countersigned by the inspector of Central Excise who visited the factory of the applicant and that at the relevant time, the applicant unit was under physical control.

2. The prayer of the applicants is therefore for setting aside the impugned order after waiving pre-deposit and seeking fresh decision on merits by the Commissioner (Appeals).

3. The prayers is opposed by the Ld. DR, who draws our attention to the finding of the adjudicating authority regarding the applicability of the extended period of limitation namely, the applicant willfully mentioned totally misleading irrelevant circular of the Ministry of Commerce in order to evade the payment of duty and that the applicant had nowhere stated that the clearances are to be made without payment of duty. He therefore, prays that the entire duty demand be directed to be pre-deposited.

4. We carefully considered the rival submissions. We find that it possible to dispose of the appeal itself at this stage, after waiving the pre-deposit of penalty imposed upon the applicants as the submissions of the applicant are correct. The documents placed on record clearly shows that the applicant had disclosed that they were clearing the goods under deemed exports with reference to the Circular dated 05/05/78 of the Ministry of Commerce. Such documents were perused by the concerned Central Excise authorities and countersigned before allowing clearance. The Commissioner (Appeals) has also given no finding on the plea regarding the applicability of the proviso to Section 11A(1) of the Central Excise Act, 1944 although, as seen from the stay order, the plea was raised by the applicant. Therefore, we are of the view that the impugned order should be set aside and the case remanded to the Commissioner (Appeals) for a fresh decision on the merits of the demand as well as the plea of the time bar without insisting on pre-deposit.

5. The impugned order is thus set aside and the appeal allowed by remand.