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SooperKanoon Citation : sooperkanoon.com/31721

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-25-2003

Judge : S T Gowri, A Wadhwa

Appellant : Jal Ltd.

Respondent : Commissioner of Customs (import)

Judgement :
1. appeal taken up for disposal after waiving deposit with consent of both sides.

2. In the order impugned in the appeal, the Commissioner has denied the benefit of the exemption contained in notification 203/92 of the good imported by the appellant on his view that one of the condition subject to which the exemption contained in the notification was available that modvat credit should not be taken of in the duty paid on the imputs on the manufacture of the exported goods. He noted that the importer had not replied to the notice issued to it before the Commissioner.

3. Counsel for the appellant cites that it is entitled to avail of the amnesty scheme announced by the government of India to such importer as contained in Board circular No. 285/1/97 CE dated 10.1.1997. He states that going through the difficulty the appellant was undergoing in adjudicating proceedings he was unable to make this claim before the Commissioner and produce documents in support of the claim. He undertakes to do so. An affidavit affirmed on 10.3.2003 by Ajay Sawale, export executive of the appellant avers that amount of credit and the

interest of the duty paid have been paid to the government before 31.1.1997 which is the cut of date for the amnesty scheme. A certificate sent by the jurisdictional Superintendent also confirms this view.

4. If it is established that the appellant had within the time specified by the circular of the Board for amnesty scheme deposited the amount and the interest as specified in the formula announced by the board of the amnesty, it would be entitled to the amnesty scheme and then would not be eligible to the exemption that was claimed. It would be necessary to examine the position in detail in order to determine whether the amount of question have been paid to the government within the specified time. For this purpose alone, the matter is remanded to the Commissioner. We note the undertaking of the counsel that he will, within three weeks of the receipt of the order he shall file written submission before the Commissioner containing evidence of deposit of the amount in question for which he will require one hearing for which a weeks notice is necessary.

5. The appeal is allowed and the impugned order set aside. The matter is remanded to the Commissioner.