Eximious Ventures Pvt. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-05-2003

Judge : J Balasundaram

Appellant : Eximious Ventures Pvt. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. For reasons recorded below I waive the pre-deposit of duty of Rs. 5,75,556/- and penalty of Rs. 20,000/- imposed under Rule 173Q and Rs. 2,000/- imposed under Rule 209 and proceed to hear the appeal itself with the consent of both sides.

2. The duty demand has been confirmed as a result of holding that the appellants herein are not eligible to modvat credit during the period 01/10/1994 to 31/12/1994 as they had not filed the declaration for the inputs. Against the confirmation of duty and imposition of penalty by the adjudicating authority, the appellants preferred an appeal along with application for waiver before the Commissioner (Appeals) who vide order dated 17/06/2002 directed pre-deposit of a sum of Rs. 4 lakhs. As against this direction the appellants moved the Hon'ble Bombay High Court by filing the Writ Petition No. 5126 of 2002. While the petition was pending, the Commissioner (Appeals) dismissed the appeal on the ground of non-compliance with the provisions of Section 35F of the Central Excise Act by the impugned order dated 31/07/2002. On 31/10/2002 the Hon'ble High Court granted stay of operation of the Commissioner (Appeals) order dated 17/06/2002 by which he had

directed pre-deposit subject to the appellants pay a sum of Rs. 2 lakhs. The appeal has come up before the Tribunal against the dismissal on the ground of non-compliance.

3. On hearing both sides and noting that the appellants had complied with the High Court order by depositing Rs. 2 lakhs and noting that there is no decisions on merits by the Commissioner)Appeals) and also noting that the same impugned order has been the subject matter of a remand order of the Tribunal in the case of Igatpuri Alloys (I) Pvt.

Ltd., I set aside the present impugned order and remand the case for fresh decision along with the case of the Igatpuri Alloys (I) Pvt.

Ltd., (order No. CI/1730/WZB/2003) to the adjudicating authority who shall pass fresh orders after hearing the appellants.