Aditya Trading Co. Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/32374

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-23-2003

Reported in : (2004)(113)LC812Tri(Delhi)

Judge : P Bajaj, M T K.D.

Appellant : Aditya Trading Co.

Respondent : Cce

Judgement :

1. Heard. In the stay application, waiver of predeposit of penalty amount of Rs. 35,00,000/- has been sought by the appellants. The issue as to whether this penalty could be imposed on the appellants who are second stage purchasers of the inputs from the first stage dealer and taken the credit on the basis of manufacturers' invoice, already stands covered in their favour in their earlier own case decided by the Tribunal reported in 2003 (55) RLT 302 : 2003 (107) ECR 214 (T).

Therefore, the stay application of the appellants is allowed.

2. In our view, the appeal itself can be also disposed of on merits.

The facts are not much in dispute. The appellants are engaged in the trading of caustic soda, soda flakes, soda ash, etc. They had been imposed penalty of the disputed amount under the erstwhile Rule 173Q read with Rule 13 of the CENVAT Rules on the ground that they had wrongly taken the modvat credit in contravention of Rule 57AE during the period December 2000 to August 2001. Similar show cause notice was also issued to them earlier for the prior period and penalty was imposed on them. But the same was set aside by the Tribunal by holding that penalty was not imposable. That order is binding on the Revenue which stands reported in 2003 (55) RLT 203 : 2003 (107) ECR 214 (T) (Aditya Trading Company v. CCE, Meerut). In the face of that order, the present impugned order which has been passed against the appellants for the subsequent period, cannot be legally sustained and is set aside.

3. Consequently appeal of the appellants stands allowed with consequential relief, if any, permissible under the law.