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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-10-2003

Judge : J Balasundaram, A M Moheb

Appellant : Rishabh Instruments Pvt. Ltd.

Respondent : Commissioner of Cen. Excise

Judgement :

1. The application for waiver of pre-deposit of duty of Rs. 49,84,216/-and penalty of equal amount arises out of the order of the Commissioner of Central Excise, Nashik. The demand consists of two parts ; (i) demand of Rs. 46,35,119/- confirmed by calculating the duty liability on the applicant who is 100% EOU set up for manufacture of measuring instruments in respect of clearance made to DTA with the prior permission of the Development Commissioner on the basis of 50% of the aggregate duties of customs in terms of Section 3(1) of the Central Excise Act, 1944 read with Notification No. 2/95 dated 4/1/95 as amended vide CBEC Circular No. 7/2001-Cus dated 6.2.2001; and (ii) for demand of Rs. 3,49,097/- confirmed on multimeters and transducers etc.

cleared to DTA without permission from the Development Commissioners (Development Commissioner's permission was only for sale of panel meters and spares for panel meters.).

2. We have heard both sides. The contention of the applicants that they were entitled to sell products covered by the letter of permission; and that entitlement is

to be determined in totality and not with reference to specific items, as per paragraph 9.34 of the Hand Book of Procedures 1997-2000, is contentious having regard to the fact that the applicants obtained specific permission only for sale of panel meters and spares thereof. The second contention that the durability of clearances made to DTA with prior permission of the Development Commissioner has been correctly calculated and paid on the basis of 50% of each of the Customs duties, as per Notification No. 2/95 is, however, prima facie acceptable in the light of the Tribunal's order in the case of Vikram Ispat v. CCE [2000(120)ELT 800 and Futura Polymers v. CCE, Chennai [2003(152) ELT 156]. Since the issue as to whether the applicants could clear goods other than those specifically permitted to DTA is debatable, we hold that prima facie case for total waiver of the demand of Rs. 46,35,119/- has not been made. Looking to the totality of the facts and circumstances of the case, we direct the applicants to deposit a sum of Rs. 10 lakhs towards duty within a period of eight weeks from today and on such deposit, pre-deposit of balance duty and penalty shall stand waived and recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without prior notice.

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