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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-10-2003

Reported in : (2004)(163)ELT463Tri(Bang.)

Judge : G B Deva, M T K.C.

Appellant : Novell Software Devp. (i) Pvt.

Respondent : Commr. of Cus.

Judgement :

1. This stay application is filed by the applicants for waiver of predeposit of duty amounting to Rs. 21,29,531/- and stay of the recovery proceedings.

2. Shri T.S. Suresh, learned Advocate appearing for the applicants submitted that the impugned items imported are in the nature of Anti Static Carpet Equipment. He said that the appellants had claimed the exemption in terms of Notification No. 140/91-Cus., dated 22-10-1991.

The exemption has been denied by the adjudicating authority on the ground that the impugned items are not capital goods. On the other hand, the Commissioner (Appeals) has accepted that the Anti Static Carpet Equipment is capital goods. However he found a new ground that there is another condition in the notification, which states that the equipment should be used for the 'development of software for export using data communication link or in the form of physical export' and this can be established and that condition has not been fulfilled. In this context, the

Counsel drew our attention to the Chartered Engineers Certificate wherein it is specifically mentioned that the subject item has been used for the development of software for export using data communication link but the same has not been considered by the Commissioner (Appeals).

4. On considering the facts and circumstances of the case and in view of the findings given by the Commissioner (Appeals) that the Anti Static Carpet Equipment is capital goods, we are of the view that this is a fit case to grant stay as prayed for and accordingly the stay application is allowed.

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