

Crosslink Ship Breakers Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-14-2003

Judge : J Balasundaram, A M Moheb

Appellant : Crosslink Ship Breakers

Respondent : Commissioner of Customs

Judgement :

1. Application for waiver of pre-deposit of duty of Rs. 7,94,269/-arises out of the order of the Commissioner (Appeals). The demand has been confirmed on fuel oil, bunkers and foodstuff. The Deputy Commissioner has applied paragraph 2(d) of the Circular No.37/96-Cus dated 03/07/1996, according to which remaining fuel and oil (other than that contained in the vessel's machinery and engines) and other ship stores including drink and foodstuffs are separately classifiable in their own appropriate heading. Differential duty amount has not been quantified by the Deputy Commissioner, but in the appeal along with the pre-deposit waiver application before the Commissioner (Appeals), the applicants calculated the duty payable by them as a result of the Deputy Commissioner's order to be Rs. 7,94,269/-. The application for waiver was rejected by the Commissioner (Appeals); for non-compliance with his direction for deposit he dismissed the appeal of the importer/applicant. Hence this application.

2. We have heard both sides. The material on record is not sufficient to determine whether the fuel and oil were in the vessel's machinery as contended by the applicant to argue that they would be considered to form an integral part of the

vessel and should not be assessed separately. Queries from the bench were directed as to the existence of any surveyor's report which might show the location of the fuel and oil on which the demand has been confirmed, but no report was available.

What was placed before us is the declaration of the master of the vessel for the inventory of the stores, oil, etc., on board the ship.

This also does not show the location of tanks in which the fuel and oil, on which demand has been continued, were located. Since the applicants have not made out a prima facie case, as seen from the above, we direct pre-deposit of the entire duty demand of Rs. 7,94,269/- within a period of 8 weeks from today, failing which the appeal will be dismissed for non-compliance, without any further notice.

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