

Maya Rasayan Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-19-2003

Judge : S T Gowri, K Kumar

Appellant : Maya Rasayan Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The stay application has been filed in appeal against the order of the Commissioner (Appeals) dismissing the appeal before him for failure by the assessee to deposit Rs. 2,96,350/- out of the duty confirmed by the Joint Commissioner of Rs. 9.28 lakhs approx (out of which Rs. 6.21 has already been paid) and equal penalty.

2. The applicant is absent and unrepresented despite notice and has filed written submissions. We have considered these and heard the departmental representative.

3. In her order the Joint Commissioner finds considerable shortage of inputs and also finds that considerable disproportion between the quantity of raw material and quantity of finished product, one of the finished product manufactured by the applicant, para nitro chloro aniline. She finds that applying the yield of 73.07% of finished product from the raw material, which is what the manufacturer accepted.

There is a considerable shortage of duty which comes to Rs. 9.28 lakhs.

The contentions of the applicant in the submissions are that duty of Rs. 6.21 lakhs has been paid, representing modvat credit on inputs has also been paid and that there is no shortage in liquid ammonia which is an essential raw material for manufacture of para nitro chloro benzene.

4. We agree that, it is debatable that the case of clandestine removal has been made out. At the same time, however, the question of the unexplained raw material has to be gone into in detail. The judgment of the Supreme Court in *Alcobex Metals v. CCE 2003 (153) ELT 241* which the applicant has relied upon does not support its case. The ratio was that where the notice demanding duty for a particular period, part of which is covered for the extended period of limitation, is invalid even for the normal period of limitation, even if it is signed by anyone other than the Commissioner who was required by law to sign. The notice dated 25.12.1998 issued to the appellant was signed by the Additional Commissioner. However, there was no requirement that the notice must be signed by the Commissioner. We therefore do not find prima facie that this judgment any relevance to the facts before us.

5. In the facts of this case therefore we find no ground for reducing the deposit ordered by the Commissioner (Appeals) of Rs. 296350/- which represents roughly 30% of the duty remaining unpaid and 15% of the total duty and penalty. While the claim of financial hardship is made, it is not supported by any evidence. Even details of such hardship are not available.

6. We therefore take up the appeal itself. If the amount in question is deposited within two months from to day, and compliance reported to the Commissioner (Appeals), his order is set aside and the matter remanded to him for disposal of the appeal in accordance with law. If the amount is not deposited, the appeal before us shall stand dismissed.

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