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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-30-2004

Judge : S T S.S., K Kumar

Appellant : Bimal Kumar Jain

Respondent : Commissioner of Customs

Judgement :

1. Shri S.S. Mani, Consultant appeared on behalf of the appellant and Shri A. Chopra, Ld. JDR appeared on behalf of the Revenue.

2. The Ld. Consultant submitted that a penalty of Rs. 10 lakhs has been imposed on the appellant under Section 114 of the Customs Act 1962 on the allegation that the appellant has introduced Shri Rajesh Aggarwal to a known CHA for the fraudulent availment of draw back and that the appellant is the real owner of M/s. SEPL; that the appellant has mis-declared the value of the exported goods for the fraudulent availment of draw back. The Ld. Consultant, however, submitted that this is factually incorrect and the appellant is not concerned with the fraudulent availment of draw back. He also submitted that the issue involved in the present case is squarely covered by the decision of the Apex Court in the case of Om Parkash Bhatia . Further he also submitted that the decision of the Apex Court in the case of Prayag Exporters Pvt. Ltd have held that when the goods are not prohibited, penalty under Section 113(d) of the Customs Act, 1962, cannot be imposed.

3. The Ld. JDR submitted that since the remittance have not come, the authorities have ordered of the excess draw back. The issue can be heard in detail at the time of final hearing as the same is required to be looked into in great detail. The appellants may be put to certain terms for pre-deposit under Section 129E of the Customs Act, 1962.

4. After hearing both sides and perusal of the records, we find that this is an undisputed fact that on account of non-receipt of remittance, the recovery of excess draw back has been ordered. In these circumstance, we find it reasonable to put the appellant to certain terms. We, accordingly direct the appellant to make a pre-deposit of Rs. 3 lakhs towards the penalty amount and report compliance by 5.4.2004.

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