Navdeep Engineering and ors. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-13-2004

Judge : J Balasundaram, A M Moheb

Appellant : Navdeep Engineering and ors.

Respondent : Commissioner of Central Excise

Judgement :

1. The applications for waiver of pre-deposit of duties and penalties arise out of the order of the Commissioner of Central Excise (Appeals), Mumbai. The case of the department in brief is that M/s. Navdeep Engineering, who are engaged in the manufacture of redrawing of copper tubes, cleared inputs namely copper tubes, finished redrawn copper tubes and copper scrap clandestinely and without payment of duty to M/s. Neha Refrigeration which existed only on paper and M/s. Neha Refrigeration was floated with the sole objective of clearing goods manufactured by M/s. Navdeep Engineering in order to evade payment of correct Central Excise duty as well as to enable other manufacturing units to avail modvat credit without physical receipt of inputs in their factories; the further case of the department is that M/s.

Navdeep Engineering charged and collected through a non-existent firm, viz. M/s. Neha Refrigeration, much higher prices than those declared in Central Excise invoices for the purpose of payment of duty, from those companies to whom the goods were diverted and sold, and that M/s. Sapna Coils Pvt. Ltd. (on whom also there is a duty demand and penalty) availed modvat credit on invoices of M/s.

Navdeep Engineering without receipt of copper tubes in their factory. On the above basis, demands of duty have been confirmed and penalties imposed as detailed in annexure A to this stay order.

3. The prima facie contention that the goods were cleared on payment of duty and even if M/s. Navdeep Engineering had cleared the goods at higher prices to the ultimate recipient M/s. Blue Star Ltd. etc., those companies, in turn, could have availed modvat credit and therefore there was no necessity for M/s. Navdeep Engineering to resort to the modus operandi as alleged, requires detailed examination of the evidence on record and it is not possible to take a view that a strong prima facie case has been made out for total waiver by the applicants.

Considering the entirety of the facts and circumstances of the case, we direct pre-deposit of Rs. 1.25 lakhs by M/s. Navdeep Engineering and Rs. 30,000/- by M/s. Sapna Coils Pvt. Ltd., towards duty, within a period of eight weeks from today and on such deposit, pre-deposit of balance duties and penalties shall stand waived and recovery thereof stayed pending the appeals. Pre-deposit of penalties imposed on the other applicants is waived and recovery thereof stayed pending their appeals.

4. Compliance by M/s. Navdeep Engineering and M/s. Sapna Coils Pvt.

Ltd. is to be reported on 3^rd May, 2004.--Sr. No. Name of the Applicant Duty demanded Penalty imposed--1.

Navdeep Engineering Rs. 5,21,598/- Rs. 5,21,598/--2.

Sapna Coils Pvt. Ltd. Rs. 1,33,774/- Rs. 1,33,774/--3.

Manoj Sharma - Rs. 50,000/--4.

Shitla Prasad Sharma - Rs. 50,000/---