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Speciality Polymers and ors. Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-2004

Judge : A Wadhwa, S T C.

Appellant : Speciality Polymers and ors.

Respondent : Commissioner of Customs and

Judgement :

1. All the stay petitions are being taken up together as they all arise out of the same impugned order passed by the Commissioner of Customs, Valsad vide which he has confirmed duty of Rs. 17,06,771/-(Rs. Seventeen Lakhs Six Thousand Seven Hundred Seventy One Only) and has imposed penalty of an identical amount on the main appellant M/s Speciality Polymers. In addition penalties of different amount have been imposed upon the other appellants who are the partner of the main importer and the Technical Advisor and Broker.

2. We have heard Shri S.P. Sheth, learned Advocate and Shri K.L.

Bablani, learned Jt.C.D.R. for the Revenue.

3. The above duty has been confirmed against the appellant on the ground that the goods imported by them under Notification No. 53/97-Cus and which were meant for utilization in the manufacture of the final product required to be exported, have been cleared by them to the domestic market and as such the benefit of the exemption Notification is not available to the appellant, Shri Sheth,

learned Advocate submits that the duty on this aspect Is to the tune of around Rs. 12 Lakhs and the balance duty has been confirmed in respect of the goods cleared from in-bond ware house but stored in another ware house. He submits that the said goods have been confiscated and are lying with the Revenue, with an option to the appellants to redeem the same on payment of redemption of Rs. 5,45,000/- (Rs. Five Lakhs Forty Five Thousand Only). He submits that the said goods have not been redeemed by them as yet and they undertake not to redeem the same during the pendency of the appeal. As such, he submits that the value of the goods being about Rs. 8 Lakhs, the same should be considered as a sufficient security with the Revenue.

4. Arguing on the other applications, learned Advocate submits that once a penalty has been imposed on the main importer which is the partnership firm, imposition of individual penalties on different partner was not justified. Similarly he submits that the imposition of penalty on the Technical Advisor and the Broker is not called for inasmuch as there was no role attributed to them for the domestic diversion of the imported goods. He also argues on the financial hardship of the appellant.

5. Countering the argument Shri K.L. Bablani, learned Jt.C.D.R. submits that the appellants has himself admitted before the Commissioner that the imported raw material involving duty of more than 12 Lakhs was diverted by them to home consumption. Even in respect of the balance goods, which had been seized and confiscated by the Adjudicating Authority, there was an admission on the part of the appellants that the goods were cleared from the bonded warehouse with an intention to sell the same in the market. As regards the financial position, learned Jt.C.D.R. submits that the appellants was not having any machinery for the manufacture of the goods in question and when visited by the officers only one generator was found there. As such, it is clear that the importation was made with an intention to avail the benefit of notification 53/97-Cus, without satisfying the condition of the same.

6. We have considered the submissions made by both the sides, we find that the appellants have not placed any defence as regards the findings of the Adjudicating Authority about the diversion of the imported goods for home clearance. Taking

into account the over all facts and circumstances of the case including the fact that a part of the goods have been seized by the Revenue and have been confiscated by the Adjudicating Authority and the undertaking given by the learned Advocate not to redeem the goods during the pendency of the appeal, we direct the appellants M/s Speciality Polymers to deposit an amount of Rs. 12 Lakhs towards duty and Rs. 1 Lakh towards penalty within a period of 8 weeks from today. Subject to the deposit of the above amount, the balance amount of the duty and penalty on the said applicant and the entire amount of penalty imposed on the other applicants are dispensed with and its recovery stayed during the pendency of the appeal. Matter to come up for ascertaining compliance and for final disposal of the appeal on 24/05/2004.

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