

Rinkoo Processors Ltd. Vs. Commissioner of Cen. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-29-2004

Judge : P Chacko, M T K.D.

Appellant : Rinkoo Processors Ltd.

Respondent : Commissioner of Cen. Excise

Judgement :

1. The applicants were working under the Compounded Levy Scheme. A penalty of Rs. 13,80,656/- was imposed on them by the Original Authority and the same was affirmed by the first Appellate Authority on the ground of delayed payment of duty, under the said scheme. Seeking waiver of pre-deposit and stay of recovery of the penalty, the Id.Counsel submits that the applicants have a strong prima facie case on the strength of the judgment of the Hon'ble Madras High Court in the case of Beauty Dyers v. Union of India [2002(52)RLT 636(Mad.)], whereby Rule 3 of Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998 was held ultra vires Section 3A of the Central Excise Act. The argument of the Id.Counsel is that, when the Rule stands struck down as unconstitutional, there could be no imposition of penalty under Rule 96ZQ(5) of the Central Excise Rules, 1944. Countering this argument, the Id.D.R. relies on another decision Passed by the same Bench of the Madras High Court on the same date, in the case of the same party, reported in 2002(52)RLT 644(Mad.) to say that it was open to the Adjudicating authority to impose a penalty less than what was prescribed as maximum penalty under Rule 96ZQ(5).

Ld.Counsel has also relied upon the Tribunal's order dated 14.1.04 passed in a stay application in Appeal No. E/1200/03-Mum, wherein, this Bench followed the Madras High Court's decision, cited by the Id.counsel and granted waiver of pre-deposit and stay of recovery in respect of an amount of penalty imposed under the aforesaid Rule.

2. We have examined the rival case laws cited by the two sides. We have also perused the earlier order of this Bench cited by the counsel. We find that the second decision of the Madras High Court cited by the Id.D.R. was not before the Bench while granting stay and waiver of penalty in Appeal No. E/1200/03. We are, therefore, unable to follow the precedent of appeal No. E/1200/03. Having examined the judgments of the Madras High Court, we find that the second judgment cited by the Id.D.R. is more specific on the point of penalty. This judgment only says that the penalty equal to duty prescribed under Rule 96ZQ(5) is only the maximum which can be imposed on an assessee working under the Compound Levy Scheme. The Court held that a lesser amount of penalty could be imposed by the Adjudicating Authority on such an assessee under the said Rule. Having examined the facts and circumstances of the instant case, we are of the view that valid grounds existed for a penalty under the aforesaid Rule. Looking closer at the facts and evidence, there seems to be no ground for full waiver of pre-deposit and stay of recovery in respect of the penalty. However, considering the facts and circumstances on record in general, and considering particularly the fact that the delay in payment of duty is as short as 1 or 2 days, we are of the view that for the present purpose, a direction for pre-deposit of a lesser amount will meet the ends of justice under Section 35F of the Central Excise Act. The applicants are directed to pre-deposit an amount of Rs. 2.5 lakhs within a period of six weeks and report compliance on 25.5.2004.

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