Lakshmi Cement Vs. Commissioner of Central Excise

Lakshmi Cement Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/35307

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-20-2004

Reported in : (2004)(170)ELT15TriDel

Judge : A T V.K., P Bajaj

Appellant : Lakshmi Cement

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application by M/s. Lakshmi Cement for waiver of pre-deposit of duty Rs. 12,20,868/- and penalty of Rs. 50,000/-.

2. Sh. K.K. Anand, learned Advocate, submitted that the Revenue has disallowed the Cenvat credit of the duty on Explosives used in the mines; that this issue has been referred to the Larger Bench of the Appellate Tribunal as there are conflicting decisions from the different benches; that in such circumstances, they have made a strong prima facie case for waiver of pre-deposit of entire amount of duty and penalty. He relied upon the decision of the Kerala High Court in the case of Binani Zinc Ltd. v. Asstt. Collector of Central Excise, Cochin, 1995 (77) E.L.T. 514 (Ker.) wherein it has been held that in case of conflicting decisions, the petitioner has made out a prima facie for grant of stay. We also heard Sh. Vikas Kumar, learned S.D.R.3. In view of the decision of Kerala High Court in Binani Zinc Ltd. case (supra) and the fact that the issue involved in the present appeal has been referred to the Larger Bench, we stay the recovery of the entire amount of duty

and penalty during the pendency of the appeal, which is posted for regular hearing on 29-7-2004.