Rangoli Prints Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-10-2004

Judge : A Wadhwa, M T K.D.

Appellant : Rangoli Prints

Respondent : Commissioner of Central Excise

Judgement :

1. Prayer in the stay petition is to dispense with the condition of pre-deposit of duty of Rs. 69,34,924/- and an equivalent amount of personal penalty imposed upon the appellant by the Commissioner on the ground that the appellant have not discharged their duty liability in accordance with the annual capacity of production fixed by the proper officer in terms of Hot Air Stenter Independent Textile processors Annual Capacity Determination Rules, 2000.

2. Shri A. Mishra, Ld. Advocate appearing for the appellant submits that they had discharged their duty burden on the basis of the actual production. He also submits that during the period May to August 2000 their factory was lying closed and as such no duty was paid. He, however, clarifies that during the period in question they were discharging their duty liability on the basis of actual production in terms of the Interim Order passed by the Hon'ble High Court of Gujarat.

As such the Ld. Advocate prays for grant of unconditional stay.

3. Countering the arguments Shri K.L. Bablani, Jt. CDR appearing for the revenue submits that subsequently the Hon'ble Gujarat High Court had disposed of the writ petition filed before them and as such the interim order was no longer applicable. Inasmuch as the appellant never opted for payment of duty on the actual production basis, they were required to discharge their duty liability on the basis of ACP fixed by the Commissioner.

4. After considering the submissions made by both the sides, we find that the appellant has not been able to show that he exercised option to pay duty on the actual production basis. Even taking into consideration his submission that out of six months for which the duty has been demanded the factory was closed for four months, we note that even for the balance of two months period the appellant was required to deposit an amount of Rs. 21 lakhs approximately whereas they have paid duty for the said two months only to the extent of Rs. 2.62 lakhs. As such, we are of the view that the appellant has not been able to make out a prima facie in its favour so as to allow the stay petition unconditionally. However, taking into consideration the financial difficulties pleaded by the Ld. Advocate, we direct the appellant to deposit the amount of duty of Rs. 5 lakhs within a period of eight weeks from today and report compliance on 10.08.2004. Subject to deposit of the above duty amount, balance amount of duty and entire amount of personal penalty shall stand waived and its recovery stayed during pendency of the appeal.