Surya Packaging Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-01-2004

Reported in : (2004)(170)ELT407Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Surya Packaging

Respondent : Commissioner of Central Excise

Judgement :

1. The application for waiver of pre-deposit of duty of Rs. 7,66,730/- confirmed on printed/imprinted laminated plastic films manufactured by the applicants and cleared in the year November 1993 to March 1994 on the ground that the benefit of exemption under Notification 14/92-CE., dated 1-3-92 was not available as the inputs, bare duty paid plastic film, fell under Heading 39.20 while the requirement of the Notification was that the final product should be made out of plastic materials falling under Chapters 39.01 to 39.15, arises out of the Order of Commissioner (Appeals).

2. We have heard both sides. The applicants made a strong prima facie case for waiver in view of the Board's Circular dated 25-6-1987 and 22-8-90, in which very same issue came up for consideration and it was clarified that as long as duty paid bare films, which hove gone into the manufacture of such lacquered/laminated/metallised plastic films can be proved to have been manufactured out of duty-paid plastic materials falling under Heading Nos. 39.01

to 39.15, such lacquered/laminated/metallised films made from such duty-paid bare plastic films can also be treated to have been manufactured out of duty paid plastic materials falling under Heading Nos. 39.01 to 39.15 and would be eligible for the concessional rate of duty as per Notification Nos. 259/86, dated 24-4-1986 or Notification No. 53/88, dated 1-3-88.

3. We also note that the applicants have contended before us that the plastic material out of which their plastic films were manufactured falls for clarification between Chapter Headings 39.01 to 39.15. In the light of the Board's Circular, prima facie case for waiver has been made. We therefore, dispense with the requirement of pre-deposit of duty and penalty and stay recovery thereof pending the appeal.