Marshal Trading Co. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-10-2004

Judge : J Balasundaram, A M Moheb

Appellant : Marshal Trading Co.

Respondent : Cce

Judgement :
1. The application for modification of stay order No.C-II/1027/WZB/2004 dated 19.3.2004 is argued by the learned counsel for the applicants who submits that non-appearance on the date fixed for hearing of the stay application was only due to the fact that the matter was listed for hearing before Court No. II which did not sit on that day and he was not aware that the short matters would be taken up by Bench II on that day. Arguing on the application for modification, he submits that the applicants are engaged in the trading activity and they were not carrying out any manufacturing activity, but were only producing some goods on trial basis and, therefore, the question of differential duty demand on any goods manufactured by them does not arise. In the alternative, he challenges the quantum of the differential duty demand arrived at by the lower authorities. The prayer of the learned counsel is opposed by the learned DR. He submits that the Bench had considered the findings of the Commissioner (Appeals) regarding the acceptance of the fact that the applicants were carrying on trading activity as well as manufacturing the goods and duty has been demanded only on goods, which were manufactured by the applicants and not those goods which were traded by the

applicants and, therefore, no ground for modification of the order has been made out.

2. At this stage, the learned counsel for the applicants submits that on 20^th December, 2002 the Bench had directed the listing of Revenue's appeal No. E/2153/02 along with the present appeal for regular hearing.

3. On a careful consideration of the rival submission and noting that prior to 19^th March, 2004, no stay order either dispensing with the pre-deposit or directing pre-deposit has been passed, and also noting that ail aspects have been considered by the Tribunal while directing for pre-deposit of the differential duty demand, we agree with the learned DR that no ground for modifying the earlier stay order of the Tribunal has been made out and, therefore, dismiss the application.

However, in the interest of justice, we extend the time for pre-deposit by further four weeks from today.