Manoj Processors 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 : Manoj Processors

Respondent : Cce

Judgement :
1. After hearing both sides for some time on the application for waiver of pre-deposit of (i) duty Rs. 90,61,458 and penalty Rs. 10,00,000/-; (ii) duty Rs. 6,38,57,516/- and penalty Rs. 75,00,000/-; and (iii) duty Rs. 4,74,08,977/- and penalty Rs. 50,00,000/-, we find that it is possible to hear and decide the appeals themselves at this stage and hence we proceed to do so with the consent of both the sides after waiving the requirement of pre-deposit of the duty and penalty amounts.

2. The demands have been confirmed and penalties have been imposed for the reason that the appellants could not produce the proof of export before the adjudicating authority. The learned counsel for the appellants submits that in respect of the order-in-original No.03/DEM/2004, under the cover of letter dated 20^th February, 2003, proof of export was submitted and, therefore, the Commissioner has erred in holding that no such proof was furnished by them. In respect of the other two orders-in-original, he submits that in one case partial proof was submitted and in another case no proof was submitted before the Commissioner, but, if an opportunity is given, he is in a position to produce the

proof of export in all the three cases and, therefore, prays that the matter may be remanded to the adjudicating authority for fresh decision in the light of proof of export to be submitted by the appellants.

4. In view of the above, we hold that a fresh opportunity is to be extended to the appellants for establishing that they had carried out the export. We, therefore, set aside all the three impugned orders-in-original and remand the matter to the Commissioner for fresh decision in the light of the documentary evidence of export to be submitted by the appellants when an opportunity of personal hearing is afforded to them. Fresh orders shall be passed after hearing the appellants.

5. All the appeals are thus allowed by way of remand after setting aside the impugned orders.