

Patterns Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-01-2004

Reported in : (2005)(179)ELT408Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Patterns

Respondent : Commissioner of Customs

Judgement :

1. For the purpose of hearing the appeal the appellant is required to pre-deposit duty of Rs. 85,35,153/-. The duty was demanded on the ground that they have failed to produce certificate from JDGFT for having completed the export obligation. It was the contention of the appellant that they have produced enormous evidence to show the proof of fulfilment of export obligation. They should not be faulted for the lapse of JDGFT in not issuing the certificate despite several reminders given by the appellants. Learned Counsel further relies on the Board's Circular No. 33 (RF.-98) 1998-1999, dated 28-9-1998 which lays down that there should be no insistence on the production of these certificates when all other documents disclose the meeting of export obligation. He submits that for the purpose of procedural lapse, the appellants cannot be directed to pre-deposit the entire duty amount.

Learned JCDR submits that non-production of certificate disentitles them from claiming relief of the benefit of notification and that they should pre-deposit the

amounts. Me also submits that the exports have taken place from several ports which is also a violation of the notification. The learned Counsel in counter submits that only charge against appellant was non-production of the certificate and there was no charge pertaining to export obligation not having been fulfilled by exporting from one single port.

2. On a careful consideration, prima facie from the facts, we find that the appellants have exported the items. It is not the charge that the appellants have not exported the goods but the only charge is that they have not produced the certificate from the authority. The appellants have been making all attempts to get the certificate as seen from the documents. In view of the Board Circular cited, the appellants have made out a strong prima facie case in their favour. Hence stay application is allowed granting full waiver of the deposit and staying its recovery. As the revenue implication is high, the matter has to be taken up out of turn hearing. In the meanwhile revenue to file para-wise comments. Matter to come up for hearing on 8-2-2005.

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