

Sterlite Optical Technologies Vs. C.C. and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-02-2004

Reported in : (2005)(180)ELT367Tri(Mum.)bai

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Sterlite Optical Technologies

Respondent : C.C. and C. Ex.

Judgement :

1. This application is for modification of Stay Order Nos. C-I/2431 to 2437/WZB/2003, dated 10-10-2003 [2004 (165) E.L.T. 467 (T)] passed by the Tribunal. The Bench, in the interim order cited supra, allowed the stay applications taking note of the fact that the applicant's bank guarantee for Rs. 11.00 crores executed in terms of the Hon'ble High Court of Bombay's order, is alive and goods worth approximately Rs. 37.60 crores which were confiscated in the impugned order of the Commissioner are under department's custody. The Bench noted that the department's interests are sufficiently safeguarded.

2. In the present application, the applicant pleads that the stay order be modified to allow the confiscated goods to be released on execution of a further bank guarantee, if need be, on the grounds : (a) The applicant has an export order for the said goods, and (b) the goods would become outdated if they remain confiscated during the currency of the appeal. The learned SDR vehemently objected to the request.

4. We observe that the grounds stated in the application are not tenable. Nothing prevents the applicant from redeeming the goods on payment of fine ordered by the Commissioner if the same goods are to be exported. We observe that the applicant did export goods even in the month of October, 2004 out of the goods manufactured by them. No evidence has been brought out by the applicant that they need the very same goods for export. The Tribunal does not entertain a stay application in respect of redemption fine under Section 35F of the Central Excise Act. This modification application seeks to achieve what is otherwise not permissible.

5. We reject the application for modification of the stay order passed by the Tribunal.

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