

Alembic Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-22-2004

Reported in : (2005)(98)ECC565

Judge : T Anjaneyulu

Appellant : Alembic Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. This is an application for granting Stay Order by dispensing pre-deposit of penalty of Rs. 4,20,000 imposed and further recovery of the same, pending disposal of the appeal.

2. The appellant is Depot of M/s. Alembic Ltd. It appears that M/s.

Alembic Ltd. originally has paid duty on the manufactured goods and subsequently additional duty. During the period 1.4.2000 to 27.9.2000, M/s. Alembic Ltd. had issued Supplementary Invoices to its buyers under Rules 54AA, enabling them to claim the credit.

3. It is submitted by the Ld. counsel for the appellant that the Department had issued Show Cause Notice on 22nd November, 2001, proposing penalty on the appellant. According to the counsel for the appellant, the demand for the penalty is time barred and consequently invocation of the provision under Rule 173Q for imposing a penalty without confiscation of the goods is illegal. On this context, the

following decisions have been relied upon.

4. The contention of the Department is that it has written letter dated 9.10.2000 stating that during relevant period the manufacturer was not eligible for the availment of Cenvat credit on the strength of Supplementary Invoices issued to Registered Dealers under Rule 52AA and this amendment came into effect from 28.9.2000 vide Notification 51/2000-CE (NT). Therefore, the Department claims that the Cenvat was passed on irregularly to the buyers and demanded to deposit the same.

Further, it is contended that there is no limitation provided for imposition of penalty, which the Department has rightly done and confiscation of the goods is not necessary in such contingencies since the goods are not available and sold already.

5. Though there appears some prima facie case on provision of Rule 173Q, in view of the aforesaid citations relied on by the appellant, however it failed to establish prima facie about eligibility to claim Cenvat credit in view of the Notification issued and further failed to show that claim is barred by limitation. The appellant failed to establish its case on these two fronts, as such it is not a fit case to grant full waiver and stay its recovery. Therefore, the appellant is directed to deposit a sum of Rs. 75,000 as pre-deposit under Section 35F within a period of six weeks i.e. on or before 11th January, 2005.

On compliance of the same, the stay order shall be in force and deposit of balance amount is waived and its recovery is stayed. Order accordingly.

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