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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-21-2004

Judge : K Kumar, A M Moheb

Appellant : Rajeev Ship Breakers

Respondent : Commissioner of Customs

Judgement :

1. These stay applications seeking waiver of pre-deposit of duties demanded arise out of a common order of the Commissioner (Appeals), who in the impugned order confirmed the order of the lower authority. The demands itself arose out of a common order passed by the lower adjudicating authority finalizing provisional assessments made from time to time.

2. The issue relates to classification of bunkers/oil, provisions and stores on board vessels brought for breaking their valuation and assessment to duty. The department contends that the above said goods have to be separately classified and assessed under the respective headings and not under the heading meant for the vessel in terms of CBEC instructions contained in Circular No. 37/96-CE dated 3.7.1996.

The lower adjudicating authority arrived at the quantities of these goods on the basis of Import General Manifests (IGMs) filed by the Master when the vessels were brought for breaking. For the purpose of arriving at the value of such stores/bunkers the lower authority relied on the value of goods imported by other importers as there was no transaction value available. The Commissioner (Appeals) in appeal rejected the various contentions raised by the applicants including the one that principles of natural justice are violated inasmuch as the applicants were not heard by the lower authority.

4. We observe that the applicants were attempting to frustrate the proceedings before the lower authorities by not attending the personal hearings granted. They not only did not attend the hearings before the lower authority but also did not attend the hearing before the Commissioner (Appeals) by asking him to decide the case on merits. This attitude of the applicants amounts to abuse of process of law. The applicants do not avail of the opportunities extended to them and later claim that principles of natural justice are violated when the case is decided ex parte. Regarding the quantification of stores/bunkers etc., we observe that the lower authority relied on the IGMs furnished by the Masters of the ships. In regard to valuation, we observe that the lower authority prima facie relied on tangible evidence to decide the value of the bunkers/stores. We do not find prima facie any infirmity in the order of the lower appellate authority. No case has been made out for complete waiver of pre-deposit of duties demanded in each of these appeals.

5. Having regard to the above observations, we direct the applicants to deposit the following amounts towards duty in each of the appeals:Sr.No. Appeal No. Amount of pre-deposit of duty to be deposited1 C/1015/04 Rs. 12,000/-2 C/1016/04 Rs. 1,93,000/-3 C/1017/04 Rs. 2,24,000/-4 C/1018/04 Rs. 68,000/-5 C/1019/04 Rs. 18,000/-6 C/1020/04 Rs. 2,35,000/-7 C/1021/04 Rs. 30,000/-8 C/1022/04 Rs. 57,000/-9 C/1023/04 Rs. 1,00,000/- 6. The applicants are directed to deposit the aforesaid amounts by 31.1.2005 and report compliance by 3.2.2005, failing which the appeals themselves will be dismissed for non-compliance without further notice.