Raymond Ltd. Vs. Commissioner of Cen. Excise

Raymond Ltd. Vs. Commissioner of Cen. Excise

SooperKanoon Citation : sooperkanoon.com/38665

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-04-2005

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Raymond Ltd.

Respondent : Commissioner of Cen. Excise

Judgement :

1. The applications for waiver of pre-deposit of duty of Rs. 3,40,63,727/- and penalty of equal amount imposed upon the applicant company and penalty of Rs. 10 lakhs on its General Manager (Indirect Taxation) arise out of the order of the Commissioner of Central Excise, Mumbai, who has confirmed the demand on Polyester Tops captively consumed by application of Rule 6(b)(ii) of the Valuation Rules, 1975 (cost construction method).

2. The period in dispute is April 1997 to June, 2000. The assessees' contention that the goods are to be valued according to the provisions of Rule 6(b)(i) - on the basis of value of comparable goods-has been rejected.

3. We have heard both sides. We note that prior to March, 1996, the applicant company was paying duty by valuing goods on cost construction basis. On 4^th March, 1996, while submitting the price declaration, they stated that they would be paying duty on all future clearances of tops and yarn based on the value of comparable goods. Objection was raised by the Department to such valuation of polyester yarn and differential duty demand of nearly Rs. 5 crores was confirmed

on polyester yarn by adopting Rule 6(b)(ii) and penalty was also imposed by the Asstt. Commissioner's order dated 16.10.1997; this order was set aside by the Commissioned Appeals) by order dated 8.5.98 by way of remand of the case for redetermination of assessable value. No objection, however, was raised to the method of valuation of polyester tops as indicated in the letter dated 4.3.96. In these circumstances, since the change in the method of assessment is the cause for short levy and such change was clearly made known to the Central Excise Authorities and was not objected to at the relevant point of time, we see prima facie merit in the contention of the applicants that the demand is barred by limitation as the show cause notice is dated 2.5.02 and prima facie the applicants cannot be held guilty of suppression and prima facie the fact of non disclosure of the value of comparable goods/cost of production (which non disclosure has been relied upon in para 46 of the impugned order to hold that the extended period of limitation is available to the department) cannot lead to the conclusion that there has been any suppression so as to warrant invoking the extended period of limitation. We are, therefore of the view that the demand is prima facie time barred and hence dispense with pre-deposit of duty and penalties and stay recovery thereof pending the appeals.