Tips Industries Ltd. Vs. Commissioner of Customs and

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SooperKanoon Citation : sooperkanoon.com/38779

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-18-2005

Reported in : (2004)(177)ELT300Tri(Mum.)bai

Judge : A Wadhwa, A M Moheb

Appellant : Tips Industries Ltd.

Respondent : Commissioner of Customs and

Judgement :

1. The stay application is directed against the order of the Commissioner (Appeals), Vadodara. In the impugned order, the Commissioner confirmed a demand for Rs. 17,00,161/- and an equal amount of penalty imposed on the applicant.

2. The dispute is in regard to modvat credit availed of by the applicant on the duty paid magnetic tapes which have been used in the manufacture of dutiable as well as non-dutiable final products. The period of dispute is 1.6.1998 to 15.7.1998. With effect from 1.6.1998, recorded cassette tapes have been exempted from payment of central excise duty. The department's contention is that the magnetic tapes on which credit has been availed have been used in the exempted final product, i.e. recorded audio cassettes, and therefore under Rule 57CC 8% of the price of the exempted product is liable to be paid when the exempted product is cleared out of the factory. Larger period of limitation is invoked inasmuch as it is alleged that the applicants have suppressed the fact that they were using the inputs on which

credit has been taken in the manufacture of final exempted products.

The applicants contend that the larger period of limitation is not invokable as the applicants have been declaring in their RG23 part II that they were using magnetic tapes on which credit has been taken in the manufacture of exempted products.

3. We have perused the records and find that the applicants have declared in Form RG23A part II which is filed with the department that 50% of the magnetic tapes on which credit has been filed were used in the exempted product. On merits also we find that the applicants have a strong prima facie case in their favour inasmuch as they have reversed the proportionate credit on the inputs used in the manufacture of final exempted products.

4. In view of our observations above, we waive pre-deposit of duty and penalty during the currency of the appeal.