

Electropneumatics and Vs. Commr. of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/40763

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-11-2005

Judge : A Wadhwa, S T S.S.

Appellant : Electropneumatics and

Respondent : Commr. of C. Ex.

Judgement :

1. The prayer in the application is for dispensing with the condition of pre-deposit of duty amount of Rs. 19,55,664/- and identical amount of personal penalty. The appellants are engaged in the manufacture of Pneumatic Cylinders and Pneumatic Valves. They are procuring rubber seals from other manufacturers and using the same in the manufacture of cylinders and valves. There is no dispute that the value of such seal is being included in the value of their final products.

2. However, such seals are also being cleared by the appellants, on demand by their customers, as replacement request. The duty confirmed is in respect of such replacement parts on the ground that clearance by the appellants would amount to manufacture, thus requiring payment of duty. However, we do not find any justification in the above stand of the revenue. The seals were cleared by the manufacturer on payment of duty. Subsequent resale of the same as spare parts would amount to trading activity and cannot, by any stretch of imagination be held to be a manufacturing activity on the part of the appellants so as to ask for duty demand for the second time. Accordingly, we are of the view that the appellants has a good prima facie case in their favour and allow the petition unconditionally.

