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Commissioner of Central Excise Vs. Sudesh Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-2005

Judge : R Abichandani, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : Sudesh Enterprises

Judgement :

1. These stay applications have been filed by the revenue for staying the operation of the impugned order of Commissioner (Appeals) by which he has set aside the order of the original authority.

2. We have heard the learned JDR. From the record we find that the demand is raised on the basis of the figures supplied by HP PWD who purchased the Bitumen Emulsion from the respondent. HP PWD has confirmed that the respondent had collected the amount from HP PWD for the invoice under which the goods have been received by them. The respondents have cleared 935.4 MTs. of Bitumen Emulsion in 1998-99 to HP PWD and 2208.3 MTs. during the year 1999-2000 whereas they have declared their sales as 82 MTs during 1998-99 and 1931. 3 MTs. during the year 1999-2000 in their RT-12 returns. Since the goods which were cleared to HP PWD were received by HP PWD and they have made the payment for the same, it is not necessary for the revenue to establish from the receipt of raw material on ward to clandestine clearances.

Once the goods have been cleared and payments have been received for such goods; no other source of procurement of these goods has been claimed by respondent, and these are not accounted for in the RT-12 returns and statutory records, clandestine removal is prima facie, established. In these circumstances, we stay the operation of the impugned order of the Commissioner (Appeals) and allow the stay applications filed by the Revenue.

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