

S.B. Packaging (P) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-2005

Reported in : (2006)(104)ECC503

Judge : R Abichandani, S T T.V.

Appellant : S.B. Packaging (P) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Interim stay was refused on 23.6.05. It was observed in the order refusing the interim stay, that prima facie, the applicant had recovered the amount by way of excise duty from the customers, and, therefore Section 11D of the Act could be invoked. It appears that the application under Sick Industrial Companies (Special Provisions)) Act, 1985 was made by the applicant on 24.6.2005. According to the learned Counsel for the appellant, the application was sent on 23.6.2005, being the date on which the interim relief was refused. Apart from the fact that the application may have been strategically made in view of the interim relief being refused, it is clear from the ratio of the decision in Metal Box India Ltd. v. Commissioner of Central Excise, Mumbai covered under Section 35F of the Central Excise Act, 1944, does not fall under any of the categories mentioned in Section 22 of the said Act. We may note that before the Hon'ble High Court in CM No.16047-48/2005, the learned Counsel for the petitioner made a wrong statement to the effect that the appeal was not listed before the Tribunal for reporting compliance with the pre-deposit order dated 23.6.2005. The very order dated

23.6.2005 had listed the matter for compliance on 31.8.2005. Thereafter, on 31.8.2005, when the appeal was dismissed for non-compliance with the order, the fact that the case was listed on that date i.e. on 31.8.2005 for reporting compliance of the stay order was clearly recorded in that order. The Hon'ble High Court while allowing the petition for consideration of the application seeking waiver of pre-deposit, made it clear that it did not express any opinion on the merits of other issues raised in the petition and the opportunity was granted to bring aforementioned event of the appellant approaching the BIFR to the notice of the Tribunal.

3. In view of the decision of the Supreme Court in Metal Box India Ltd. and because the fact that financial position of the Appellant was such that it could not satisfy the government dues even from its assets and investments, has not been demonstrated before us, we find no reason to recall the order of dismissal of appeal for non-compliance. This application is, therefore, rejected.

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