

Sun Food Tech Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-23-2005

Judge : R Abichandani, M T K.C.

Appellant : Sun Food Tech

Respondent : Commissioner of Central Excise

Judgement :

1. This miscellaneous application is for early hearing of the stay application and the appeal. The appeal was admitted and the stay application was heard.

2. The applicants were denied concessional rate of duty under Notification No. 9/2002-CE dated 1-3-2002 on the ground that they had not filed the declaration claiming exemption under the Notification 9/2002-CE before the clearance of the goods. The applicants submitted that they had filed the declaration under their letter 28-8-2002 and post it under certificate of posting on that date. The adjudicating authority had admitted this fact and held that even otherwise the applicants were entitled for SSI benefit under Notification 9/2002-CE and he accordingly dropped the proceedings against the applicants.

However, on appeal filed by the Department, the Commissioner (Appeals) set aside the order-in-original and allowed the appeal thus confirming the demand of Rs. 36,768/-.

3. It was pleaded on behalf of the Revenue that the applicants factory is in Bhiwadi and submitted the letter was sent under certificate of posting from Mayapuri which is far away from their factory and the place of the range office.

4. We find that under the law there is no requirement of place from where the letter has to be posted. The adjudicating authority has correctly held that even otherwise the applicant is entitled for the Benefit of exemption under Notification 9/2002-CE dated 1-3-2002.

Therefore, considering the facts and circumstances of the case, prima-facie, there is merit in the pleading of the applicants.

Therefore, we waive the pre-deposit of duty demanded for hearing the appeal. The appeal will be posted for hearing in due course. The miscellaneous application and the stay application stand disposed of accordingly.

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