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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jan-02-2006

Judge : S Peeran, J T T.K.

Appellant : Uni Socks (India) Ltd.

Respondent : Commissioner of Cus. and C. Ex.

Judgement :

1. The appellant has prayed for waiver of pre-deposit Rs. 81,48,576/- being the duty of excise on the value of clearance of socks in the DTA by the appellant, an EOU unit on the allegation that the same has been cleared clandestinely without payment of duty. Likesum has been imposed as penalty on the appellant-company and penalty of Rs. 5,00,000/- on the Managing Director. There is also confirmation of interest. Socks are not dutiable and exempted in terms of the Tariff. Revenue has proceeded on the basis of the Notification No. 125/84-C.E., dated 26-5-1984 which lays down that once the EOU unit clears the goods in DTA area, they are liable to pay whole of the duty of excise leviable under Section 3 of the Central Excise Act.

2. The appellant's contention is that the question of levy of excise duty does not arise as the same is exempted at nil rate of duty under the tariff. It is their submission that the Commissioner's proceeding on the basis of the Larger Bench judgment rendered in the case of Himalya International Ltd. 2003 (154) E.L.T. 580 (Tri.-LB), which has been set aside by the Apex Court and remanded for de novo. The matter is under consideration by the Larger Bench. He submits that there is

no demand for Customs duty and therefore, the Commissioner was not justified in confirming demands when there was no duty liability. The appellant's company is closed since 2002 and faced with severe financial hardship and therefore, they are not in a position to pre-deposit the amount. The learned Counsel submits that the order itself is not sustainable in law and hence, they should be given full waiver of pre-deposit and stay its recovery.

3. The learned JDR submitted that in terms of the noted Notification, the appellants are required to pay the Customs duty in case the clearances have been made in the DTA area. He also points out to the shortage of stocks on which duty is also leviable.

4. On a careful consideration, we notice that the Commissioner has not proceeded to confirm Customs duty in the matter for not having exported the goods. As they have cleared the goods in DTA area, therefore, the Notification No. 125/84-C.E. dated 26-5-1984 rescinded by Notification No. 24/2003-C.E. dated 31-3-2003 has been held to be not applicable.

However, in terms of the Notification, the excise duty that is required to be confirmed has to be the tariff rate. The tariff rate is nil. In this circumstance, it is not clear as to how excise duty could be confirmed in the matter. In Para 34 of the impugned order, the Commissioner has noted that in terms of the cited Larger Bench judgment 50% of the duty of Customs can be confirmed but there was no demand for Customs duty in the show cause notice. Furthermore, the Larger Bench judgment has already been set aside. Therefore, prima facie, the plea that the impugned order is not sustainable is required to be considered. The appellants have a very strong case on merits. Hence, they are given full waiver of pre-deposit of duty and penalty in the matter and staying its recovery. As the Revenue implication is more than Rs. 1.5 crores, the appeal is required to be heard out of turn.

Matter to come up for hearing on 8th May 2007.

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