Amar Enterprises Vs. C.C.E.

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SooperKanoon Citation : sooperkanoon.com/41440

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-09-2006

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Amar Enterprises

Respondent : C.C.E.

Judgement :

2. Applicants filed this application for waiver of pre-deposit of duty of Rs. 26,71,455/- and penalty of Rs. 10 lakh. The Revenue has already recovered the amount of Rs. 5 lakhs by way of encashment of bank guarantee. The applicant is a 100% Export Oriented Unit (EOU) and also clearing the goods in Domestic Tariff Area (DTA) during the period in dispute the goods cleared by DTA was assessed at the same price on which the goods were exported by the applicants.

3. The contention of the applicant is that as per Section 3 of the Central Excise Act, 1944 that in respect of the goods cleared to DTA 100% EOU, the value of the same is to be determined in accordance to the provisions of the Custom Act as the goods are imported into India.

The contention is that during the same period, the similar goods are being imported into India almost at the same price at which the applicant cleared to DTA. The contention is that though all evidences are not produced before the adjudication authority but the same bills are produced. The applicants also submitted that the adjudicating authority wrongly relied upon the decision of the

Tribunal in the case of Tata Coffee Ltd. v. Commissioner of Central Excise, Hyderabad . The contention is in that case the Tribunal held that Rule 3(1) of Customs (Valuation) Rules, 1988 stipulate that the value of goods sold in domestic tariff area shall be determined as if the goods are imported into India. In that case, there was no evidence available regarding the similar goods imported into India. In these circumstances, the Tribunal held that the export price is to be taken into consideration for assessing the goods, which are cleared to DTA. In the present case the price of similar goods which (sic, have been) imported into India, is available. Therefore, the same is the relevant factor. The applicants also relied upon the Board Circular. The applicants also pleaded the financial hardship on the ground that their Unit is closed.

5. Keeping in view of the facts and circumstance of the case and the financial hardship, the amount already deposited is sufficient for hearing of the appeal. The remaining amount of duty and penalty is waived for hearing of the appeal.