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Central Distribution Centre Vs. Commissioner of Cus. and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-06-2006

Judge : J Balasundaram, Vice-, S T Chittaranjan

Appellant : Central Distribution Centre

Respondent : Commissioner of Cus. and C. Ex.

Judgement :

1. The application for waiver of pre-deposit of duty of Rs. 30,07,089/- and equal amount of penalty arises out of the Order of the Commissioner of Central Excise (Appeals), Mumbai. An amount of Rs. 2,54,581/- has been confirmed on readymades falling under Chapter 52 and this duty demand is not contested by the applicants who have paid a sum of Rs. 1,67,135/- after adjusting input stage credit. Since the department is not extending the benefit of adjustment of input stage credit at this stage the applicants will be required to deposit the balance amount paya`le mn readymades under Chapter 62, viz. 87,444/-.

2. The bulk duty demand has been confirmed on made-ups falling under Chapter 63 on the ground that although the raw material was supplied by the applicants to job workers, for manufacture of bed sheets, pillow covers etc., the finished goods were being delivered to the applicants and sold exclusively in the NTC mills showroom ald, therefmre, sinae the applicants had the full ownership of these goods, they were liable to discharge the duty liability.

4. We find prima facie force in the submission that ownership is not relevant for the purpose of determining liability to Central Excise duty. As regards liability on the supplier of raw material. Rule 12B of the Central Excise Rules, 2002 provides for discharge of duty liability by the person who gets yarns or fabrics or readymade garments or made-up textile articles falling under Chapter 63, produced or manufactured mn his own account on job work. We note that this rule came into force w.e.f. 1-4-2003 and therefore, prior to this date (the period in dispute is August, 1998 to March, 2003) prima facie duty liability cannot be fastened upon the applicants herein who are the suppliers of the raw material.

5. In these circumstances, we direct pre-deposit of Rs. 87,444/- (Rupees eighty-seven thousand four hundred forty-four only) being the balance duty payable on readymades falling under Chapter 62 within four weeks from today and waive pre-deposit of balance duty confirmed on made-ups falling under Chapter 63 and waive pre-deposit of penalty and stay recovery thereof pending the appeal.

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