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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Feb-15-2006

Judge : S Peeran, J T T.K.

Appellant : Psi Data Systems Ltd.

Respondent : The Commissioner of Customs

Judgement :

1. This is an appeal against OIA No. 441/03 Cus dated 22^nd December 2003 passed by the Commissioner of Customs (Appeals). The appellant is a 100% EOU, They imported certain goods for development of computer software in terms of Notification No. 140/91-Cus dated 22.10.91. The initial warehousing period is 5 years in respect of certain goods. The appellants applied for extension of the warehousing period to the Chief Commissioner. No communication was received from the Chief Commissioner but the jurisdictional officer demanded duty on the warehoused goods under Section 72 of the Customs Act 1962. Further interest at the rate of 29% was imposed. A penalty of Rs 5,000/- was imposed under the provisions of Section 72 and 117of the Customs Act 1962. The appellants were aggrieved over the order of the Original Authority. Hence they appealed to the Commissioner (Appeals). The Commissioner (Appeals) in the impugned order has held that the goods were lying unused beyond the warehousing, period and hence, ceased to be warehoused goods. He also held that the case of Pradeep Ullal (133 ELT 428) cited by the applicant would not be applicable as the application for extension of warehousing period was made after the expiry of the warehousing

period.

The appellants strongly challenge the impugned order. Hence they have come before this Tribunal for relief.

2. Shri K.S. Ravishankar learned advocate appeared for the appellants and Shri G. Havanur learned SDR for the Revenue.

3. The learned advocate invited our attention to the following observations in the findings of the Original Authority in the OIO No.04/2002/CD/DC/2003 dated 7.3. 2003.

The first issue raised by the learned advocates on the basis of the grounds that the duty has been demanded on bonded warehoused goods on which an extension was sought for from the Commissioner of Customs and till such time the application is considered favourbaly or rejected, the Dy Commissioner cannot proceed with the adjudication proceedings and relied on number of case laws in support of the same. I fully agree that the above contention of the advocates that the extension of the warehousing period of the warehoused goods is under the competence of the Commissioner and until a decision by the competent authority is rendered, no duty can be demanded. The " said principle as well as the law as laid down by the Hon'ble Tribunal in the case of Pradeel Ullal v. Commissioner of Customs 2001 (133) ELT is followed in letter of spirit and no duty was confirmed except a proposal by virtue of the show cause in the circumstances of the case.

He pointed out that the lower authority in the next paragraph takes a different stand on the ground that these goods cannot be called as warehoused goods on account of the fact that warehousing period has expired. While coming to the above conclusion, the lower authority has relied on the Apex Court decision in the case of Kesoram Rayon v. CCE Kolkatta . He said that the case of Pradeep Ullal is clearly applicable to the present case as the CEGAT has held that the Commissioner is bound to consider the extension application even if it is belatedly made. He also pointed out that till now no communication has been received in respect of the application for extension of warehousing period. He said that the appellants are prepared to clear the goods on payment of duty on the value arrived at after giving the allowance for depreciation in accordance with law. The learned SDR reiterated the impugned OIA.4. We have gone though the records of the case carefully. It is a fact that no action has been taken on the appellants application for extension of warehousing period by the Chief Commissioner/Commissioner.

We do not agree with the observation of the Commissioner (Appeals) that Pradeep Ullal case is not applicable. In the Pradeep Ullal case it has been held that the Commissioner or Chief Commissioner is under obligation to consider the application for extension despite it having been belatedly made and the confirmation of the demand by the Dy Commissioner was premature. Since it has been made before the extension application was considered as provided under the law. The Tribunal in the case of Phoenix International Ltd v. CC Chennai 2004 (62) RLT 181 (CESTAT-Che) has held that confirmation of duty demand without waiting for a decision on the pending application for extension of warehousing period is not legal and proper. The Tribunal in CBS Gramophone Records & Tapes (India) Ltd. v. CCE 1991 (154) ELT 399 maintained by SC has held that in respect of removal of ware housed goods, even after the expiry of warehousing period, rate of duty would be the rate as applicable on the date of removal of goods. In any case, since the Chief Commissioner or Commissioner has not yet responded to the application for extension of warehousing period, we hold that the demand is pre-mature. In any case, we remand the matter to the lower authority to decide the matter denovo in the light of the Order of the Commissioner on the application of the appellant. In any case, at the time of clearance of the goods, the benefit of depreciation on the value of the bonded goods in terms of Board Circular and the relevant guidelines of the Exim policy should be given. Hence we remand the matter to the lower authority on the above guidelines. Appeal is allowed by remand.

(Operative portion of this Order was pronounced in open court on conclusion of hearing)