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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-28-2006

Judge : R Abichandani, M T K.C.

Appellant : Uniworth Ltd.

Respondent : Commissioner of Customs

Judgement :

1. This appeal is directed against the order of the Commissioner confirming the duty demand of Rs. 72,85,010/- in respect of machines mentioned in Annexure 'A' to the show cause notice and a further duty demand of Rs. 30,12,355/- in respect of machines mentioned in Annexure 'B' to the show cause notice and imposing penalty of like amounts totaling Rs. 1,02,97,365/-, on the appellant under Section 114A of the Customs Act.

2. The learned counsel appearing for the appellant raised two contentions before us, namely that the goods in respect of which the duty demand is confirmed under the impugned order are in the control of the Customs authorities and, therefore, no such deposit of duty was required to be made under Section 129E of the Customs Act for the hearing of the present appeal and further that the explanation to Section 114A, which was inserted along with the provisos in Section 114A, by virtue of Section 81 of the Finance Act, 2000, did not apply and, therefore, penalty could not have been imposed under Section 114A.3. The learned counsel for the applicant relied upon detention memo in support of his contention that since the goods in respect of which the duty demand was confirmed were in the control of

the Customs authorities, pre-deposit cannot be insisted upon. On perusal of that detention memo, a copy of which is placed on record, it appears that the goods, particulars of which were detailed thereunder were being detained by keeping them in the custody of the applicant. The goods detained would ordinarily be considered under the control of the Customs authorities. It transpires that the machines mentioned therein are only three compressors, one boiler and two air-conditioners. These are not the machines mentioned in Annexures 'A' and 'B' to the show cause notice in respect of which the duty demand is confirmed. The machines in Annexure 'A' to the show cause notice were gill box, comber, assembly winder, TFO and gas seining machine. The machine, which was mentioned in Annexure 'B', was opening and blending machine.

Therefore, the detention memo as placed on record has no relevance at all with the goods mentioned in Annexures 'A' and 'B' to the show for which the duty demand is confirmed. The reliance placed on this detention memo issued in respect of three compressors, one boiler and two air-conditioners by the learned counsel is, therefore, wholly misconceived.

4. While the order was being dictated, the learned counsel now states that the goods enumerated in Annexures 'A' and 'B' were seized and handed over to the applicant under "superdinama" (now shown to the Court) pursuant to which an undertaking has been given by the appellant to keep them in safe custody and to produce them in time. Since the goods were seized, they can be said to be under the control of the concerned authorities even if they are kept in the safe custody of the appellant under "superdinama" against the undertaking given by the appellant. We, therefore, take note of this aspect.

5. As regards the contention that the expression "the provisions of this Section", occurring in the explanation to Section 114A, which was added along with the provisos by Section 81 of the Finance Act, 2000, will have reference only to Section 81 of the Finance Act, 2000 and not to the other provisions of Section 114A, it would suffice for us to observe at this stage that once the amendment was made in Section 114A, by virtue of Section 81 of the Finance Act, 2000, the explanation became part of Section 114A and the expression "the provisions of

this section" occurring in the first clause of the explanation has an obvious reference to all the provisions of Section 114A. As per the last proviso added in Section 114A, no penalty shall be levied under Section 112. This is why under the impugned order while levying penalty under Section 114A, it has been made clear that the penalty under Section 112 was not levied.

6. No contention has been canvassed on the merits of the case and the above two contentions do not warrant waiver of the pre-deposit. Having regard to the facts and circumstances of the case, we, therefore, direct that there shall be interim stay of the impugned order on the appellant's depositing 50% of the penalty amount within eight weeks from today, failing which the appeal shall stand dismissed. On the amount being so deposited, there shall be waiver of the pre-deposit of the rest of the amount payable under the impugned order by way of duty and penalty. Post the matter for reporting compliance on 5-7-2006.

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