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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-12-2007

Judge : N T C.N.B., M Ravindran

Appellant : Na

Respondent : Hakti Ind. (P) Ltd.

Judgement :

2. The appellant, Navshakti Ind.(P) Ltd. imported 26 consignments of paper and sought their clearance in 1997-98. The goods were claimed as printing paper and they were assessed accordingly. From a chart filed with the appeal, it is also seen that 19 consignments were cleared against Test Bonds. These Test Bonds were also subsequently cancelled.

Since some of the consignments were detained (pending test etc.) for long period, the Deptt. also issued detention certificate in 1998, so as to enable the appellant to obtain waiver of demurrage charges from the Container Corpn. of India and Shipping companies.

3. Subsequently, on 23-7-2002, a SCN was issued alleging that the goods imported were actually news print, and on account of mis-declaration as printing paper, there was a short levy of customs duty of about Rs. 32 lakhs. The appellant resisted the allegation; but under an ex parte order dated 31-8-2006, that demand was confirmed and penalties imposed.

The present appeal and stay application are directed against that order.

4. The appellant has raised several contentions against the demand and imposition of penalty. It is being pointed out that these proceedings are not sustainable at all, in-as-much as, in regard to the detention of the consignments for the same reason, the appellant had filed a Suit in the Hon'ble Delhi High Court of Delhi (S. 2667/98) and the suit was decreed in favour of the appellant. The decree was ordered that the Customs authorities will pay the appellant a sum of Rs. 46,31,929/- with interest @ 18%. The submission is that, the dispute about the nature of the imposed goods remains settled between the parts under the decree and it was not open to the customs authorities to raise that issue again through a show cause notice.

5. Another point being made that since the provisional assessment bonds had been cancelled upon finding that the goods were as declared, it was not open to the revenue to invoke proviso to Section 28A of the Customs Act alleging that there was any mis-declaration by the appellant. It is being pointed out that the cancellation of the bonds shows that test reports from the Customs Chemical Laboratory confirmed that the paper consignments were of printing paper. The allegation is that those reports were being suppressed. It is being pointed out that the appellant has specifically sought copies of those test reports from the customs authorities during adjudication but that request was rejected under letter dated 18-1-2006 stating that "CRCL reports are not available in the case record and also do not appear to the relied documents in the SCN". The allegation of the Ld. Counsel is that revenue is trying to keep evidence favourable to the appellant out of the proceedings, so that demand could be confirmed.

6. In the above noted situation, we are of the opinion that it is a fit case for granting waiver of pre-deposits. Firstly because the same dispute had arisen between the parties before the Hon'ble High Court and the decree made is binding on both parties. Secondly, the record shows that their provisional assessments were finalized, apparently, based on tests by Customs Laboratory. If that was the case, there is no justification for invoking the extended period, merely because another report by Central Pulp and Paper Institute has been received.

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