

Chandan Polymers Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-21-1989

Reported in : (1990)LC497Tri(Delhi)

Appellant : Chandan Polymers

Respondent : Collector of C. Ex.

Judgement :

1. The applicants have made a prayer for dispensation of the pre-deposits of the duty amount of Rs. 53,577.11. Shri A.L. Mathur Ld.

Consultant has appeared on behalf of the Applicants has pleaded that the period involved in the present appeal is from 17-11-1986 to 24-12-1986 and the Show Cause Notice is dated 10-03-1988 and the same was issued by the Superintendent of Central Excise and after the amendment of the proviso to Section 11-A w.e.f. 27-12-1985 the Superintendent had no jurisdiction to issue the Show Cause Notice and the proceedings are ab initio void. In support of his arguments he has cited judgment of the Tribunal in the case of Kapil Brothers v. C.C.E., Patna reported in 1988 (37) E.L.T. 239 (Tribunal). He has pleaded for the grant of stay. Sh. M.S. Arora, Ld. JDR in view of the earlier judgments of the Tribunal leaves it to the Bench.

2. We have heard both sides. The facts are not disputed. The Show Cause Notice was issued by the Superintendent and the extended period of limitations of 5 years has been invoked. The Tribunal in the case of Kapil Brothers v. C.C.E., Patna,

reported in 1988 (18) ECR 437 had followed the Gujarat High Court's judgment in the case of Gujarat State Fertilizer Co. Ltd. and Anr v. U.O.I, and Ors. reported in 1988 (34) E.L.T. 442 (S.C.). In view of the legal position discussed above, we are of the view that if the applicants are desired to deposit an amount of Rs. 53,577.11, it will amount to undue hardship. We dispense with the pre-deposit of the same and further order that during the pendency of the appeal, the Revenue authority will not pursue recovery proceedings of the duty amount.

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