

Vishnu Processors Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-1990

Reported in : (1990)LC184Tri(Delhi)

Appellant : Vishnu Processors

Respondent : Collector of C. Ex.

Judgement :

1. By the aforesaid stay order dated 29.11.89, the West Regional Bench of this Tribunal directed the applicants to deposit Rs. 3 lakhs in cash within a period of 8 weeks from the date of the order. The total amount of duty demanded from the applicants was Rs. 11,75,491.00 in addition to penalty of Rs. 10 lakhs. Before passing the stay order, the Tribunal had considered the financial hardship of the applicants. In this Misc.

Application, the applicants have come up with a request for modification of the earlier stay order and dispensing with the deposit of duty and penalty.

2. We have heard Shri Willingdon, learned advocate for the applicants and Smt. Zutshi, learned SDR for the respondent. Shri Willingdon has stated that when this stay application came for hearing he could not appear before the Tribunal as his wife was hospitalised. The representative, who appeared before the Tribunal on the date of disposal of the stay application could not properly explain the financial hardship with reference to the balance-sheet. In that background the Tribunal gave the aforesaid direction of depositing Rs 3 lakhs within 8 weeks. Shri Willingdon

has stated that the applicants' financial condition is such that it is not possible for them to deposit the entire amount of Rs. 3 lakhs as per direction of the W.R.B. In this connection, he has drawn our attention to the balance-sheet as on 30.9.89 and the profit and loss account for the period ending on that date. He has particularly emphasised that applicants obtained secured loans amounting to more than Rs. 8 lakhs and un-secured loans for about Rs. 5 lakhs. In addition, the applicants had sundry creditors to the extent of Rs. 4,06,328.23. As regards the assets of the applicants, Shri Willingdon has stated that the applicants have got Sundry Debtors to Rs. 4,63,240.66 only. Smt Zutshi for the Revenue has argued that the applicants are a partnership concern. The partner's assets and liabilities have not been disclosed by the applicants. She has also drawn our attention to the list of Sundry Debtors. Smt. Zutshi has, however, left the matter to the discretion of the Bench.

3. After concluding his argument, Shri Willingdon has offered to deposit a sum of Rs. 1 lakh within a period of one month. He has, however, prayed that the earlier direction of the Tribunal may be modified directing the applicants to deposit total sum of Rs. 2 lakhs within the period of 8 months.

4. We have considered the request of Shri Willingdon. We have also gone through the details furnished in the balance-sheet as on 30.9.89. We observe therefrom that the applicants obtained loans from the Union Bank of India against hypothecation of goods & T.O.D. to the extent of Rs. 8,24,021.30. They have also obtained un-secured loans amounting to Rs. 4,81,655.50. They had Sundry Creditors to the extent of Rs. 4,06,328.23. They had Sundry Debtors amounting to Rs. 4,62,240.66. Out of these Sundry Debtors an amount of Rs. 59,359.00 is due from Radha Krishna Textiles Printery. A sum of Rs. 73,398.00 is due from Bindeeya Textiles. Another sum of Rs. 1,09,336.01 is recoverable from Girish KR Devji Bhimji. Except these three amounts, the amounts recoverable from other Sundry Debtors are rather small. Although in the balance-sheet closing stock has been shown to be Rs. 6,29,302.00 on perusal of the Profit & Loss account for the period from 1.4.89 to 30.9.89, we find that the stock of finished goods has been shown as 'nil'. The amount of closing stock shown in the balance-sheet represents raw-materials and packing stores. Therefore, the applicants are not expected to

procure any fund by selling the closing stock. This being the position, we are of the view that it will amount to hardship if the Tribunal persists on the deposit of the full amount of Rs. 3 lakhs by the applicants. In the circumstances, in partial modification of the earlier order of the West Regional Bench, we give the following directions to the applicants : - (i) They should deposit Rs. 1 lakh in cash within the period of one month as offered by the learned advocate during the time of arguments before us today.

(ii) They should deposit another sum of Rs. 1 lakh within the period of three months after expiry of the first month from today.

(iii) They should give an undertaking to the satisfaction of the Collector of Central Excise, Vadodara not to dispose of their land and buildings and plant and machinery till the disposal of their appeal.

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