

Devayani Processors Pvt. Ltd. Vs. Union of India (Uoi)

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Court : Gujarat

Decided On : Sep-24-2004

Reported in : 2005(183)ELT139(Guj)

Judge : M.S. Shah and; D.A. Mehta, JJ.

Acts : Central Excise Rules, 1944

Appeal No. : Misc. Civil Application No. 1497 of 2004 in S.C.A. No. 5457 of 2004

Appellant : Devayani Processors Pvt. Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : Jitendra Malkan, SSC

Advocate for Pet/Ap. : Disha Nanavaty, Adv.

Judgement :

ORDER

M.S. Shah, J.

1. Rule. - Mr. Jitendra Malkan, learned Senior Standing Counsel for the Central Government waives service of Rule for the respondents. At the joint request of Ms. Disha Nanavaty for the petitioner and the learned Senior Standing Counsel, the application is taken up for hearing today.

2. This is an application for review of our Order dated 25-8-2004 by which we had directed respondent Nos. 2 to 4 to grant the petitioner registration under the Central Excise Rules for conversion of the unit, from the status of 100% EOU to that of a Domestic Tariff Area Unit upon the petitioner complying with various conditions. As per condition No. (ii), the petitioner was to deposit, without prejudice to its rights and contentions, a sum of Rs. 48,01,567/- against the order-in-original dated 31-7-2003 being the amount of customs duty, subject to verification of any payment made by the petitioner earlier against the said amount. No modification is sought in respect of the said direction.

However, modification is sought to condition Nos. (iii) to (vii) insofar as the petitioner is required to make a deposit of 10% of the amounts demanded in the show cause notices. The learned Counsel for the petitioner has invited our attention to the Order dated 26-4-2004 in Special Civil Application No. 1122 of 2004 and connected matters wherein a direction was issued against the department to consider the grant of permission to the 100% Export Oriented Units to be converted into Domestic Tariff Area Units subject to the condition that the unit shall pay ten per cent of the amount involved in a show cause notice within a period of ten months at the rate of one per cent per month and that the department has granted such permission subject to such condition.

3. Having heard the learned Counsel for the parties, we modify our Order dated 25-8-2004 insofar as condition Nos. (iii) to (vii) in Direction I are concerned and direct that instead of deposit of 10% of the duty amount involved in the respective show cause notices, the petitioner shall deposit a sum equivalent to one per cent of the duty amount involved in each show cause notice over a period of ten months. The first such deposit shall commence from 7th October, 2004 and the subsequent payment shall be made by the seventh day of each succeeding month.

4. In view of the above modification, direction No. II is also required to be modified and, therefore, upon the petitioner complying with condition Nos. (i), (ii), (viii) and (ix) in direction No. I and after the petitioner deposits one per cent of the duty amount involved in each show cause notice referred to in condition Nos. (ii) to (vii),

the respondents shall grant the Central Excise registration by debonding within one month from the date of compliance with the aforesaid conditions.

5. So also condition No. (vii) requires some modification, inasmuch as now the petitioner is not going to deposit 10% of the duty before grant of the debonding permission. Hence, it is clarified that any show cause notice which may be issued within ten months from today shall also be subject to the petitioner's liability to pay one per cent every month for a period of ten months as stipulated for the show cause notices mentioned in condition Nos. (iii) to (vi).

6. Rule is made absolute to the aforesaid extent with no Order as to Costs.

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