Beepee Coating Ltd. Vs. Commissioner of C. Ex. and Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-21-1996

Reported in : (1996)(87)ELT72Tri(Mum.)bai

Appellant : Beepee Coating Ltd.

Respondent : Commissioner of C. Ex. and Customs

Judgement :
1. For hearing the appellants appeal on merits they are required to deposit a sum of Rs. 1,20,97,078/- towards the duty and Rs. 1,00,000/- towards the penalty.

2. Mr. Willingdon, the ld. Advocate, submits that the applicants are the subsidiary company of M/s. Berger Paints Ltd. at Kalapat, and by virtue thereof, the goods purchased by M/s. Berger Paints were being delivered directly at the applicant's factory for the purpose of manufacture of paints. Some of the goods were received under the invoices, which were in the name of M/s. Berger Paints Ltd. with the address of the said firm shown as the one of the present applicant, and under the bona fide belief they took the Modvat credit on those documents. When the objection was raised as to the availability of those documents for the purpose of taking Modvat credit, M/s. Berger Paints Ltd. issued separate invoices and affidavits were also obtained from the suppliers to indicate that the goods covered under those invoices were directly despatched to the present appellants. The Certificate were also issued by the suppliers to the said effect. In his submission, therefore whatever defect existed as the documents, were duly rectified subsequently, referring to the decision of this Bench in Amal Rasayan Ltd. v.

Collector of Central Excise -1993 (67) E.L.T. 133 (Tribunal). He submits that therefore, subsequent rectification in the documents would be sufficient and the Modvat credit availed of on the documents subsequently rectified, is permissible. He therefore submits that here is a case where Modvat credit is wrongly denied, however, for the purpose of compliance with the requirement of Section 35F, he is prepared to give Bank Guarantee upto 25% of the duty amount demanded or deposit the amount upto 10% of the duty demanded.

3. Shri S.V. Singh, the ld. JDR however, submits that the documents which can be accepted for the purpose of availment of Modvat credit have been duly specified under Rule 57G, and if those documents in the same form do not exist, Modvat credit cannot be availed of. He therefore submits that the appel-lants have availed of Modvat credit on documents which are irregular, and subsequent rectification thereof could not be condoned.

4. Considering the submissions, there are debatable issues requiring consideration at the final hearing stage and therefore accepting offer made by the ld. Advocate. We direct the appellant to make a deposit of Rs. 12,00,000/-within a period of 2 months, and report compliance by 9-8-1996. On compliance there shall be stay against recovery and waiver against pre-deposit of the balance of duty and penalty amount on due compliance, the parties will be at liberty to apply for out of turn hearing which will be considered on merits.