

(2011) 07 DEL CK 0317
In the Delhi High Court
Case No : CEAC 15 of 2011

A One Laminators Pvt. Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Citation : (2011) 181 DLT 545 : (2012) 276 ELT 172 : (2011) 8 RCR(Civil) 289

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Seema Jain, Ajay K. Jain and Dushyant K. Mahant, for the Appellant;
Ashwani Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.

CM APPL. 11817/2011 in CEAC 15/2011

CM APPL. 11856/2011 in CEAC 16/2011

Exemption allowed subject to just exception.

These applications stand disposed of.

CM APPL. 11816/2011 in CEAC 15/2011

CM APPL. 11855/2011 in CEAC 16/2011

1. Notice, Mr. Bhardwaj accepts notice on behalf of the Respondent.

2. Since both the parties are ready to argue the matter finally, we have heard the arguments and proceed to dictate the order.

3. These two appeals are filed against the common order dated 18th March, 2011 passed by the learned Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the CESTAT") on the stay applications filed by the

Appellants in the appeals which are still pending before the CESTAT. Vide impugned order, the Appellants are directed to deposit 60% of the amount demanded within a period of eight week while waiving the amount of interest and penalty demanded by the adjudicating authority. It is not necessary to state the facts of the matter in detail since the appeals of the Appellants are still pending before the CESTAT. As we are concerned with the validity of the aforesaid interim directions, we take note of the facts which are relevant for the purpose of determining this aspect. It is an admitted case that both the Appellants are engaged in printing and lamination of polyester film with metalized film/polyester film. These metalized films are polyester which are further converted in pouches and bags. The Appellants have been treating the aforesaid activity as manufacturing activity and they have been paying the excise duty thereupon. At the same time, the Appellants also took Cenvat credit of duty paid on inputs. However, show cause notices were issued to the Appellants asking the Appellants to reverse the Cenvat credit amounting to Rs. 25,59,857/- and Rs. 14,11,216 respectively. Notices were also issued on the premise that the process of lamination/metalisation of polyester films undertaken by the Appellants does not amount to manufacture and, therefore, the Appellants were not entitled to take credit of duty paid on inputs. The Appellants protested the aforesaid show cause notices submitting that they had paid the excise duty on the furnished goods and, therefore, the Respondent were not justified in reversing the Cenvat credit availed by the Appellants. The Appellants also relied upon the judgment of the Apex Court in the case of CCE, Ahmadabad v. Narayn Polyplast 2005(179) E.L.T.20 (SC). The adjudicating authority, however, did not agree with the aforesaid submission of the Appellants and confirmed the demand made in the show cause notices with interest and also imposed equal amount in the nature of penalty on the Appellants.

4. The Appellants preferred appeals against the orders of the adjudicating authority before the Commission (Appeals) which were also dismissed. Against the orders of the Commissioner (Appeals), the Appellants have now preferred further appeals before the CESTAT which, as mentioned above, are still pending before the CESTAT. In these appeals, the Appellants moved stay application seeking waiver of pre-deposit in which the impugned orders have been passed.

5. The neat submission made by the learned Counsel for the Appellant is that if the aforesaid process is not to be treated as manufacturing process and the Appellants are not entitled to Cenvat credit on that basis, then the Appellants were also not required to pay any excise duty. It is also pointed out that the excise duty paid by the Appellants is much more than the Cenvat credit availed by the Appellant. It is also pointed out that Cenvat credit was not claimed or paid to the Appellant in cash but was utilized in payment of excise duty only. There is adequate force in this submission of the Appellants and we are of the view that the CESTAT while passing the impugned order could not have glossed over these glaring facts which would clearly disclosed a prima facie case like this and the Appellant should not be fastened with any liability of making pre-deposit, as

directed.

6. In the aforesaid circumstances, are of the view that the appeals of the Appellants should be heard without any condition of pre-deposit. These appeals are accordingly allowed and the impugned directions of the Tribunal are set aside.