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(2010) 10 BOM CK 0185

In the Bombay High Court

Case No : Central Excise Appeal No. 111 of 2010

Slugs India Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35F

Citation : (2011) 265 ELT 30

Hon'ble Judges : V.C. Daga, J;R.M. Savant, J

Bench : Division Bench

Advocate : V. Sridharan and Prakash Shah, instructed by PDS Legal, for the Appellant; A.S. Rao and S.D. Bhosale, for the Respondent

Final Decision : Allowed

Judgement

1. Perused appeal. Heard learned Counsel for the Appellant and learned Counsel for the Respondent.

2. The only question involved in this appeal is whether the Tribunal is justified in directing the Appellant to deposit Rs. 2 lakh by way of pre-deposit u/s 35F of the Central Excise Act, 1944 ("Act" for short). The legal issue involved in the appeal before the Tribunal is whether the Zink Dross is an excisable commodity merely because the said product can be sold in the market as such can it be equated as marketable commodity within the meaning of the Central Excise legislation.

3. All these questions need serious consideration at the hands of Tribunal in view of the judgments of the Apex Court in the case of Union of India and others Vs. Indian Aluminium Co. Ltd. and another, and Collector of Central Excise, Patna Vs. Tata Iron and Steel Co. Ltd., governing the issue. In the circumstances, this is a fit case for grant of total exemption from payment of duty at this stage.

4. Having said so and having tested the impugned order on the above canvas, the impugned order can hardly be said to be a sustainable order.

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5. In the result, impugned order is set aside. Appeal is allowed. The Tribunal is directed to hear the appeal on its own merits without insisting for pre-deposit.

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