

2012 (2) ECS (49) (Tri-Mum)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO

Application No. E/S/384/2011-Mum

M/s Dujodwala Paper Chemicals Ltd.
Versus.
Commissioner of Central Excise, Raigad.

Appeal No. E/346/2011-Mum.

[Arising out of Order-in-Appeal No.YDB/852/RGD/2010 dated 16.12.2012 passed by the Commissioner (Appeals) Central Excise, Mumbai-II]

M/s Dujodwala Paper Chemicals Ltd.

Appellant

Vs

Commissioner of Central Excise, Raigad.

Respondent

Appearance

Shri Bharat Raichandani, Advocate for Appellant

Shri V.R. Kulkarni, Deputy Commissioner (A.R.) for respondent

CORAM

Hon'ble Mr. S.S. Kang, Vice President

Hon'ble Mr. Sahab Singh, Member (Technical)

Date of hearing: 13.07.2012

Date of decision:13.07.2012

ORDER NO: S/1373/12/EB/C-II

A/711/12/EB/C-II

“The applicant were clearing the goods to depot and paying duty at clearance from the factory gate and same goods were sold at higher value from depot. The adjudicating authority confirmed the demand and imposed penalty.” [Para 2]

“We find that applicants cleared the goods at the higher value from the depot than the value at which duty has been paid at the factory gate. In applicants own case where the demand is confirmed on the same ground the Tribunal vide Stay Order dt. 15.5.2012 directed the applicant to deposit 50% for hearing of the appeal. In view of the earlier stay order, and keeping in view of the facts and circumstances of the case, the applicant is directed to deposit an amount of Rs.8,00,000/- (Rupees eight lakhs only) within six weeks from today in addition to the amount already deposited for hearing of the appeal.” [Para 6]

Per: S.S. Kang

1. Heard both sides.
2. The applicant filed this application for waiver of pre-deposit of duty of Rs.31,64,063/-, interest and penalty. The demand is confirmed on the ground that the applicants are undervaluing the goods for the purpose of payment of duty. The applicant were clearing the goods to depot and paying duty at clearance from the factory gate and same goods were sold at higher value from depot. The adjudicating authority confirmed the demand and imposed penalty. The applicants filed appeal before the Commissioner (Appeals) and Commissioner (Appeals) directed the applicant to deposit 50% of the total dues for hearing of the appeal. The applicant failed to comply with the conditions of the stay order therefore the Commissioner (Appeals) dismissed the appeal without going into the merit.
3. The contention of applicant is that major portion of the demand is time barred. The demand is for the period 2003-04 to January 2009 and show cause notice dated 6.2.2009 was issued demanding duty invoking the extended period. The contention is that during the period in dispute the Revenue was regularly conducting audit and raising the issue of under valuation of goods and the audit was conducted in the year 2006. As the audit raised the objection regarding undervaluation, therefore Revenue was aware of the fact regarding undervaluation and the show cause notice was issued in February 2009 invoking the extended period. In these circumstances the allegation of suppression is not sustainable the demand for normal period is Rs.7,90,364/- the applicant had already deposited this amount. The applicant also contested the demand on merits. In these circumstances, it is a case for total waiver of duty for hearing of the appeal, as applicant had already paid the duty for the normal period.
4. Revenue submitted that in applicant's own case in Appeal No. E/476/-2012 vide Stay Order No. S/802/12/EB/C-II dated 15.5.2012, the Tribunal directed the applicant to deposit 50% of for hearing of the appeal when the demand is confirmed on the same ground.
5. Further, the revenue submitted that applicant never disclosed the fact that the applicants are clearing the goods at higher value from the depot. Therefore, it is a clear suppression of facts with intent to evade payment of duty. During the audit this issue was raised and applicants had not deposited differential duty. Hence it is a case, where the willful suppression with an intent to evade payment of duty. Therefore, the demand by involving the extended period is rightly been made.
6. We find that applicants cleared the goods at the higher value from the depot than the value at which duty has been paid at the factory gate. In applicants own case where the demand is confirmed on the same ground the Tribunal vide Stay Order dt. 15.5.2012 directed the applicant to deposit 50% for hearing of the appeal. In view of the earlier stay order, and keeping in view of the facts and circumstances of the case, the applicant is

directed to deposit an amount of Rs.8,00,000/- (Rupees eight lakhs only) within six weeks from today in addition to the amount already deposited for hearing of the appeal.

7. As noted above, the Commissioner (Appeals) had not decided the appeal on merits. Therefore the impugned order is set aside and matter is remanded to the Commissioner (Appeals) to decide the appeal on merits, on showing the deposit of the above mentioned amount and after affording an opportunity of hearing to the appellant. The appeal is disposed of by way of remand.

(Dictated in court)