

2014-TIOL-1206-CESTAT-KOL

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA**

Stay Petition No.SP-70449/2013

Appeal No.Ex.Ap.70444/2013

Arising out of Order-in-Appeal No.09/KOL-IV/2013 Dated: 1.3.2013
Passed by the Commissioner(Appeal-III) of Central Excise, Kolkata

Date of Hearing: 30.6.2014

Date of Decision: 30.6.2014

M/s MUKUND FOODS PVT LTD

Vs

COMMISSIONER OF CENTRAL EXCISE, KOLKATA-IV

Appellant Rep by: Shri Ankit Kanodia, CA

Respondent Rep by: Shri Anirudha Roy, Supdt., AR

CORAM: D M Misra, Member (J)

I P Lal, Member(T)

CE - Issue relates to demand of duty on shortage of goods noticed while making a comparison between monthly RT-12 returns and balance sheets of the respective years -

appellant submitting that because of some erroneous interpretation of data, error has crept into the balance sheet, showing excess production of finished goods - CA certificate pointing out these mistakes was not considered by Commissioner(A) who dismissed their appeal on account of failure to make pre-deposit - appellant makes an offer to deposit Rs.5.00 Lakhs and prays that the matter may be remitted.

Held: a fair chance must be given to appellant to present their case - at the same time, interest of Revenue should be safeguarded - appellant directed to deposit Rs.5 lakhs and report compliance directly to Commissioner(A) who after recording compliance would proceed with the matter without insisting for further pre-deposit - Matter remanded: CESTAT [para 5]

Matter remanded

FINAL ORDER NO.A/75398/2014

Per: D M Misra

1. This is an Application seeking waiver of pre-deposit of duty of Rs.31.78 Lakhs and equal amount of penalty imposed under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944 and penalty of Rs.5,000/- under Rule 27 of Central Excise Rules, 2002.

2. At the outset Shri Ankit Kanodia, Ld.C.A. for the Applicant submits that Ld.Commissioner has not decided the issue on merit but dismissed their Appeal for default in making pre-deposit of the amount directed to them, under Section 35F of Central Excise Act, 1944. He submits that the issue relates to demand of duty on shortage of goods noticed while making a comparison between their monthly RT-12 returns and balance sheets of the respective years. He submits that because of some erroneous interpretation of data, error has been crept into the

balance sheet, showing excess production of finished goods. He submits that with proper evidences they could justify before the Ld.Commissioner(Appeals) the mismatch between RT-12 returns and annual balance sheets of the respective years. He makes an offer to deposit Rs.5.00 Lakhs and prays that the matter may be remitted to the Ld.Commissioner(Appeals).

3. The Ld.A.R. for the Revenue submits that the issue has not been decided on merit. However, he has no objection for remanding the case to the Ld.Commissioner(Appeals) for deciding afresh.

4. After hearing both sides we find that the Appeal itself could be disposed of at this stage. Accordingly, we take up the Appeal for disposal with the consent of both sides.

5. We find that the simple issue involved in the present case is short payment of duty on account of difference in the production figures shown in the RT-12 returns and the data reflected in respective balance sheets. From the submission of the Ld.C.A. prima facie, we find that the figures mentioned in the balance sheet were incorrect inasmuch as there was some mistakes in booking the figures by the concerned C.A. In support they have obtained Chartered Accountants Certificate for the said mistakes and placed before the Ld.Commissioner(Appeals) which was not considered. In these premises, we are of the view that the Appellants should be given a fair chance to present their case. Also we agree with the Ld.A.R. for the Revenue that while remanding the case the Appellant be put into terms. Consequently, we direct the Appellant to deposit Rs.5.00 Lakhs within a period of eight weeks from today and report compliance directly to the Ld.Commissioner(Appeals). The Ld.Commissioner(Appeals) after recording compliance would proceed with the matter without insisting for further pre-deposit. Needless to mention, a reasonable opportunity of hearing be granted to the Appellant. All issues are kept open. Appeal allowed by way of remand. Stay Petition also disposed of.

(Pronounced and dictated in the open court.)

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