

Customs, Excise and Gold Tribunal - Calcutta

Boc (India) Ltd. vs Commissioner Of C. Ex. & Cus. on 18 February, 2002

Equivalent citations: 2002 (146) ELT 68 Tri Kolkata

Bench: A Wadhwa, N T C.N.B.

ORDER C.N.B. Nair, Member (T)

1. When the Miscellaneous Application came up for hearing, learned Counsel, Shri B.J. Mookherjee submits that the pre-deposit ordered in Order Nos. S-1227-1228/KOLKATA/2001, dated 23-11-2001 would cause undue hardship to the assessee as the issue remains covered in their favour by the Order of this Tribunal in the case of Ammonia Supply Company v. Commissioner of Central Excise, New Delhi reported in 2001 (131) E.L.T. 626. Learned Counsel also submits that in a similar case, stay had allowed as is seen from the case reported in 2001 (132) E.L.T. 184 (Tribunal) = 2001 (47) RLT 679. In the circumstances, learned Counsel submits that modification of our earlier Stay Order as to grant of waiver of pre-deposit is called for and undue hardship would be caused to the applicants, if the pre-deposit is insisted upon.

2. Learned D.R., Shri A.K. Pandit, points out that in the present case the applicants/appellants were receiving the Gas Cylinders and if found suitable, they were affixing the label and selling the same. He, therefore, submits that the goods become marketable only after this procedure and therefore, levy of duty has been correctly done.

3. We have perused the records and the Orders of the Tribunal referred to by the assessee's Counsel. We feel that in view of the earlier Orders of the Tribunal, the assessee's case merits waiver of pre-deposit. Our Stay Order Nos. S-1227-1228/KOLKATA/2001, dated 23-11-2001 is accordingly modified as prayed for by the applicants/appellants, and waiver of pre-deposit is allowed.

Appeal is fixed for hearing on 18-3-2002.