

Karnataka HC allows EOU to adjust sale-proceeds of duty-paid goods towards pre-deposit before CESTAT

Case Name: Avesthagen Limited vs. The Commissioner of Central Excise, Bangalore

Judgment Date – March 11, 2016

HC allows sale of duty paid goods intended for operations within bonded warehouse (i.e. non-bonded goods) by 100% EOU, and adjustment of proceeds towards making pre-deposit before CESTAT in matter of appeal w.r.t. duty demanded on exempted goods, warehoused, bonded, but thereafter confiscated; Assessee's request to sell non-bonded goods lying in warehouse, which are its absolute property, to raise funds to make pre-deposit for filing appeal was rejected by Revenue, stating that, said goods would not be allowed to be removed unless adjudication levies were paid in full; Accepts assessee's plea that, if it is placed on terms and under strict supervision of Revenue, non-bonded goods, if ascertainable, should be permitted to be sold in favour of purchasers and monies raised could be provided to Revenue or deposited before CESTAT, to meet ends of justice; Consequently holds that on sale of goods, amount shall be firstly deposited as pre-conditional deposit before CESTAT and remaining amount under protest shall be appropriated by Revenue, subject to appeal result; Further, directs that CESTAT can subsequently, address interim application or even main appeal itself, with expedition

Decision Brief:

Writ Petition was filed under Article 226 and Article 227 of the Constitution of India praying to quash the order dated September 28, 2015.

Assessee, Avesthagen Limited, was public limited company engaged in business of scientific research and export of research services and was claiming to be 100% Export Oriented Software Technology Park Industrial Unit under the Foreign Trade Policy and Customs Act, 1962. It had commenced research activities and imported duty exempted goods which were bonded and warehoused in private bonded warehouses of ITPL, Whitefield, Bangalore. Assessee had also procured certain goods on payment of duty and had not claimed any exemption. These goods were termed as 'non bonded goods' and were used for their operations within the premises. It stated that these non bonded goods were absolute property of assessee and was not subject to any statutory or other restriction.

Assessee was served with an Adjudication order wherein duty free goods imported were confiscated under the provisions of Act and duty foregone on them, i.e. duties of customs and central excise and other levies like fine and penalty were demanded. Aggrieved by the order, assessee filed an appeal before CESTAT. However, assessee admitted that, it was facing a severe financial crunch and therefore, seeks to sell non-bonded goods which are their absolute property and which were lying in custom bonded warehouse. It

further submitted that, this would not only enable them to raise funds for making the deposit which is a pre-requisite of filing the appeal, but also would enable to save goods which otherwise would deteriorate and would be wasted. Therefore, assessee made request to sell the goods in market. However, assessee's prayer was rejected and it was held that, assessee would not be allowed to remove goods at all, either partially or otherwise, unless adjudication levies, were paid in full. Consequently, assessee approached HC.

HC found force in assessee's contention that, if assessee was placed under strict supervision of Revenue and non-bonded goods which are their absolute property could be ascertained and permitted to be sold in favour of purchasers and money raised were directly provided to Revenue or made to be deposited with CESTAT towards demand of pre-conditional deposit and remaining amount, if any could be handed over to Revenue, in partial discharge of any liability, subject to appeal result, then it would meet the end of justice.

HC therefore concluded that, amount realized on sale of goods would be first deposited with CESTAT as pre-conditional deposit and remaining amount shall be appropriated by the Revenue, subject to result of appeal. HC directed that, CESTAT shall thereafter address the interim application or even main appeal itself with expedition.

HC accordingly, disposed writ petition as above.

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