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**(2010) 04 CAL CK 0096**

**Calcutta High Court**

**Case No:** CEXA No. 52 of 2009 and GA No. 2531 of 2009

Nicco Corporation Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

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**Date of Decision:** April 29, 2010

**Citation:** (2010) 255 ELT 49

**Hon'ble Judges:** Mohit S. Shah, C.J; Sengupta, J

**Bench:** Division Bench

**Advocate:** Pranab Kumar Dutta and A.D. Dey and K. Dey, for the Appellant; R. Bharadwaj and K.K. Maity, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

1. We have heard the learned Counsel for the parties in application being G.A. No. 2531 of 2009.

2. According to the learned Counsel for the appellant, as against the duty liability of Rs. 1,05,58,210.32, the appellant has already paid a sum of Rs. 52,79,105.16. Therefore the appellant is seeking stay against coercive recovery of the balance amount of Rs. 52,79,105.16p. It is submitted that the appellant company is running into losses and is unable to pay the balance duty amount or the amount of penalty, which is levied to the tune of Rs. 1,05,58,210.32. Reliance is placed on the certificates issued by the Warship Production Superintendent of the Navy Office at Calcutta to the effect that goods supplied by the appellant were for supply "as store for consumption On-Board a vessel of Indian Navy". (A/c. Karmuk).

3. On the other hand, learned Counsel for the respondent has opposed the said application. It is submitted that the matter is covered against the appellant by decision of the Apex Court in Leader Engineering Works v. Commissioner of Central Excise, Chandigarh 2007 (212) E.L.T. 168 (S.C.).

4. Having heard the learned Counsel for the parties, we are of the view that while the certificates issued by the Warship Production Superintendent of the Navy Office at Calcutta may give justification for granting stay against coercive recovery of the penalty amount, in view of the decision of the Apex Court in *Leader Engineering Works (supra)*, the appellant is not entitled to claim unconditional stay against recovery of the duty amount. Having regard to the fact that the appellant has already paid 50% of the duty amount being Rs. 52,79,105.16 as stated at the Bar and as indicated in the document at page 47 of the stay application, we are of the view that the interests of justice would be served if the appellant is required to pay a further 25% towards the duty liability, that is to say, a further sum of Rs. 26,40,000/- by cash within two months from today, failing which this interim stay shall stand vacated without any further reference to this Court. For the balance 25% amount, the appellant shall furnish bank guarantee within one month from today.

5. The stay application is, accordingly, disposed of.

6. The appellant shall file requisite number of paper book within three months from date.

7. Since the respondent No. 1 is represented by its learned Advocate Mr. Bharadwaj, service of notice of appeal is waived on it. However, notice of this appeal shall be served on the other non-appearing respondents.

8. Urgent certified Photostat copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.