

Agile Electronics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-25-1997

Reported in : (1997)(94)ELT636TriDel

Appellant : Agile Electronics

Respondent : Commissioner of Central Excise

Judgement :

1. Appellants were manufacturing goods falling under T.I. No. 68. They were availing of the benefit of Notification No. 46/81, dated 1-3-1981 which exempted goods falling under Tariff Item No. 68 which goods were not manufactured in a factory. This notification was rescinded on 1-8-1985. Vide another Notification No. 77/85-C.E., the first clearance of such goods upto Rs. 20 lakhs in value were exempted from payment of duty. This notification came into effect from 1-4-1985. The appellants took benefit of this notification w.e.f. 1-8-1985 i.e., after the earlier Notification No. 46/81 was rescinded. At the end of the financial year 1985-86, the Jurisdictional Officer included the value of clearance made under Notification No. 46/81 also for the purpose of calculation of value of total clearance in the year 1985-86. After issuing the show cause notice and after hearing the assesseees, the Assistant Collector confirmed the demand for differential duty. This order having been upheld by the Collector (Appeals), the present appeal is before us.

2. The appellants had requested for disposal on merits. The strong point urged in the Appeal Memorandum is that in terms of Explanation H(a) of Notification No. 77/85, the value of clearances made under Notification No. 46/81 could not be

taken into account.

3. We have heard Shri G.D. Sharma, JDR. It is his claim that Notification No. 46/81 exempted those goods which were not made in a factory. He further states that in the first paragraph of Notification No. 77/85, it is clearly brought out that exemption is available to the goods manufactured in one or more factories. It is his submission that since there was a distinction made in Notification No. 46/81, clearances made thereunder would not qualify for exemption in terms of explanation.

5. The wordings of Explanation n(a) of Notification No. 77/85-C.E. is as follows :- "Explanation II - For the purposes of computing value of clearances under this notification - (a) the clearances of excisable goods, which are exempted from the whole of the duty of excise leviable thereon by any other notification (not being a notification where exemption from the whole of the duty of excise leviable thereon is granted based upon the value or quantity of clearances made in a financial year) issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and for the time being in force, shall not be taken into account." 6. Notification No. 46/81 exempted goods from whole of duty of excise.

That notification did not provide exemption on the criterion of value of clearances; that notification was issued under Rule 8(1) of the Central Excise Rules, 1944 and that both the notifications were in force for part of the same calendar year. Thus, all the conditions stipulated in Explanation It insofar as they relate to the appellants are satisfied. We have considered the claim of Shri Sharma that since this Notification speaks of 'factory' and since the other notification specifically exempts goods not manufactured in a factory, the benefit of this notification should be denied. It is his claim that since explanation is part of notification, interpretation as made by the lower authorities is correct. We observe that definition of a factory made in Section 2(e) of the Act, does not exclude therefrom a unit which was not recognised as a factory in terms of the definition in the Factories Act. In fact, Notification No. 46/81 seeks to exempt those factories which were not in terms of definition of the term 'factory' under the Factories Act. Although this has not been made clear in the body of the notification, once it is accepted that definition of

factory in Notification No. 77/85 should be in terms of Central Excises and Salt Act and not in terms of the Factories Act, the objection of Shri Sharma lacks merits. On these observations, we allow the appeal, set aside the order of the Collector and direct consequential relief to the extent warranted.

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