Ruchika Electronics Ltd. Vs. Collector of Customs

Ruchika Electronics Ltd. Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/11614

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-1997

Reported in : (1997)(94)ELT663TriDel

Appellant : Ruchika Electronics Ltd.

Respondent : Collector of Customs

Judgement :

1. In this appeal filed by M/s. Ruchika Electronics Ltd., the matter relates to the eligibility of the importers and the imported goods to the benefit of Customs Notification No. 232/83-Cus., dated 18-8-1983.

There is no dispute in the proceedings that the goods imported were covered by the description given in the table annexed to that notification. The only dispute is that the importers had not produced any certificate from the prescribed authorities that they were actual users (industrial) of the goods imported. Initially the goods were allowed clearance at the concessional rate of duty as provided in the aforesaid exemption notification. The goods were cleared under bill of entry dated 19-7-1986 and subsequently the demand notice was issued on 4-4-1988 by the Assistant Collector, Customs on the ground that the requisite certificate from the prescribed authorities with regard to the status of the importers as the actual users has not been produced.

This demand notice was not adjudicated and in the meanwhile another notice was issued by the Additional Collector on 29-11-1988. The matter was adjudicated by the Additional Collector of Customs who observed that the essentiality certificate was not a mere procedural requirement and that the exemption was not available for importing unlimited quantities of the inputs to be used at the concessional rate. He demanded the differential duty of Rs. 21,50,174.56, but did not impose any penalty and recommended the case for inquiry into the collusion aspect on the part of the departmental officers who assessed the bill of entry without requisite essentiality certificate issued by the DGTD.2. We have heard Shri M.M. Mathur, Advocate for the appellant and Shri A.K. Agarwal, SDR for the revenue. We find that the demand notice was issued on 29-11-1988 for the bill of entry dated 19-7-1986. Ld.

Advocate had submitted before vis that the duty was also paid on the same date i.e. 19-7-1986. The goods had been assessed at the concessional rate and were cleared out of customs charge. After more than two years the demand notice was assessed. In the demand show cause no penal provisions were invoked. Subsequently another show cause notice was issued by the Additional Collector, Customs on 29-11-1988.

In this demand notice while there was a reference to suppression of material facts, there was no proposal for imposing any penalty. We find that the goods having been cleared by the proper authorities and without any specific allegation with justifiable grounds for invoking the extended period of limitation, this case can be decided on the question of limitation alone without going into other aspect. We find that in both the demand notices, there was no proposal for imposition of any penalty. There was also no detail how it could be alleged that appellants have suppressed the facts. The goods had been cleared by the Customs authorities after giving the benefit of notification referred to above. The adjudicating authority while confirming the differential duty had made certain observations about the intention in giving concession in the exemption notification. We find that no such condition is prescribed in the notification and the only condition among others is that the importer should be an actual user. The facts and the circumstances of the case do not justify the denial of exemption, especially when benefit had been given at the time of import and there is no dispute that the importers were otherwise actual users (industrial).

3. Thus without going into other aspects of the matter, we consider that the demand was hit by time bar. Accordingly, the appeal is allowed.