Entermode Polycoaters Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-05-1997

Reported in : (1998)(74)LC447Tri(Mum.)bai

Judge : R T Lajja, S Kang

Appellant : Entermode Polycoaters Pvt. Ltd.

Respondent : Cce

Judgement :

1. In this appeal filed by M/s Entermode Polycoaters (P) Ltd., the matter relates to the eligibility of the goods in question to the benefit of Not. No. 250/77-CE dated 23.7.1977 as amended. This exemption Notification provided the exemption to the fire resistant products falling u/s. h. No. 5903.99 or 5906.90 of the Schedule to the CETA, 1985 (referred to as the Tariff). There is no dispute that the goods in question were classifiable u/s.h. No. 5903.99 of the Tariff.

The benefit of the exemption Notification had however been denied on the ground that the appellants had not produced any concrete evidence to indicate that the impugned products were fire resistant one and were so used.

2. We have heard Shri. R. Swaminathan, Advocate for the appellants and Shri Satnam Singh, SDR for the respondent Revenue.

3. We have gone through the impugned order-in-appeal and find that the Appellate Authority had summarised the main grounds of the appeal in para 2 of his order.

Their submissions made during the course of the personal hearing had been summarised in para 3 of his order. In the operative part of his order in para 4, he had observed as under: 4. I have gone through the order-in-original, the appeal petition and the record of the personal hearing carefully.

The appellants have not produced any concrete evidence to indicate that the impugned product is fire resistant one and is so used even at the time of original adjudication proceedings or at the appellate stage. Gujarat High Court in their decision in the case of Hind Engineering Co., Rajkot v. Commissioner of Sales Tax has held that 'the law is well settled that it is for a person who claims an exemption to establish it; a person who claims benefit of exemption must bring his case squarely and fairly within the provisions granting exemption'. This has not been discharged by the appellant.

4. Shri R. Swaminathan, Advocate referred to the submissions made by the assessee before the adjudicating authority and referred to the classification lists relating to the period prior to the one in question in the present proceedings. He stated that the samples had been drawn of the goods in question and that the report of the Chemical Examiner did not indicate whether the sample tested was fire resistant product or otherwise on the ground that the chemical lab. had no such facility. He referred to the test report of One Shri Siddarth Roy, Chemical Engineer and stated that this report was before the adjudicating authority at the time of the personal hearing. It was his submission that they had submitted evidence which had been summarised by the Appellate Authority but had not been discussed as the report of the Chemical Engineer was not categorical. They had also requested for test by some other equipped laboratory. It has not been done.

5. Shri Satnam Singh, SDR had submitted that the order passed by the adjudicating authority was detailed and speaking and it was not necessary for the Appellate Authority to tread the same ground again.

He also submitted that the exemption notification had to be construed strictly and that the burden was on the the assessee to substantiate their claim if they want to avail the benefit of any exemption notification. He further submitted that as the appellants had not been able to substantiate their claim they could not avail of the benefit of exemption notification. He further submitted that as the appellants had not been able to substantiate that the goods were useable as fire resistant product and as all the information was available on record, the final view could be taken by the Tribunal on the basis of the evidence already on record.

6. We find that the appellants had made a number of submissions in reply to the show-cause notice and in their appeal before the Collector, Central Excise (Appeals). They had also produced some documentary evidence about the assessment in respect of similar products of other manufacturers. They had also requested for retest as the report of the Chemical Engineer was not categorical.

7. We find that the Collector, Central Excise (Appeals) had not dealt with these submissions. The operative part of his order had already been extracted above. As lie had not gone into the various submissions made by the appellants, we consider it to be a fit case for remand.

Although the ld. SDR had pleaded that as all the available information is on record, a final view could be taken by the Tribunal. We consider that as the matter has not been examined by the Appellate Authority, it would be in the interest of justice if the matter is remanded.

8. Shri R. Swaminathan, Advocate submits that the matter be remanded to the original authority as he has to take a view about the tests etc.

9. Taking all the relevant considerations into account, we remand this matter to the jurisdictional Asstt. Commr. for de novo consideration who before passing his order should give an opportunity of personal hearing and then pass a speaking appealable order as per law.