C.C. Vs. Chamundeshwari Studio and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Dec-04-1997

Reported in : (1998)(100)ELT264Tri(Chennai)

Appellant : C.C.

Respondent : Chamundeshwari Studio and

Judgement :

1. This is a departmental appeal challenging the order-in-appeal No.268/88, dated 26-4-1988 passed by the Collector of Customs, Madras, reversing the order-in-original passed by the Asst. Collector of Customs, Air Cargo Complex, Bangalore.

2. The Asst. Collector rejected the respondent's claim for assessment of certain goods under Heading 98.01 of the 1975 Tariff read with the Project Import Regulations, 1986 (for short Regulations) and the appellate authority reversed this decision and held the respondent entitled to the benefit of the concessional rate of duty available for project imports.

3. The respondent set-up a Cinematographic Laboratory. Production started on 13-8-1985. For the purpose of initial setting-up of the laboratory, respondent imported necessary equipment from abroad under a contract duly registered with Registering Authority under the Regulations and obtained the benefit of concessional rate of duty treating the equipment as falling under Heading 98.01 and covered by the Regulations.

4. In 1987, the respondent purported to import spares for the original equipment as essential for the maintenance of the plant and filed Bill of Entry bearing the date 12-5-1987 (as mentioned in the orders passed by the Lower authorities) seeking clearance of the spares on payment of concessional rate of duty available under the Regulations. The Asst.

Collector rejected the claim under the Regulations on various grounds, namely that the respondent's unit is not an industrial plant as defined in the regulations; and that the spares are not imported in connection with the initial setting-up of the plant which alone will be covered by the Regulations. The Collector (Appeals) held that the contract for import of spares was a continuation of the original contract for import of equipment; that respondent's plant is an industrial plant falling within the scope of the Regulations and spares fall under Heading 98.01 of the tariff. The findings and the reasonings of the Collector (Appeals) are under challenge.

5. The eligibility of the benefit of the Regulations can be claimed only by a unit of any "industrial plant" as defined in Regulation 3(a) of the Regulations. The definition reads as under: (a) "industrial plants" means an industrial system designed to be employed directly in the performance of any process or series of processes necessary for manufacture, production or extraction of a commodity, but does not include - (i) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops; or (ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to section XVI or the said First Schedule.

6. In order that the exclusion clause (1) should apply, the establishment must be one designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops.

7. Any enumeration which follows the expression "such as" is illustrative and not exhaustive. The expression is generally used to introduce example of a class. See jalal Plastic Industries v. Union of India -1981 (8) E.L.T. 653 (Guj.), Royal Hatchery v. State of Andhra Pradesh -1994 (53) ECR 200 (SC), and Foremost Dairies Ltd.

v. State of Orissa -1993 (88) STC 535 (Orissa H.C.). The illustrative enumeration in the exclusion clause (1) must necessarily belong to a class. The illustrations ranged from Hotels and Hospitals at one end, to photographic film processing laboratories, photocopying studios, and workshops at the other end. What is common to the illustrative examples is that these illustrative units did not manufacture excisable products covered by the Central Excise Act, 1944. It is clear that service establishments or establishments designed to offer services of any description must be those which do not manufacture excisable products goods and not attracting provisions of the Central Excise Act, 1944. If this be the correct understanding of the exclusion clause (1) Cinematographic Laboratory which engages in the manufacture of excisable products and is covered by the provisions of the Central Excise Act, 1944 cannot be regarded as "service establishment" falling within the meaning of the exclusion clause. Even according to the department, the respondent's establishment will not be industrial plant only if it is to be regarded as attracting the exclusion clause (1). It must be therefore follow that the establishment is an industrial unit as defined under the Regulations 3(a).

8. The next contention of the department is that the benefit of concessional rate of duty will be available only if the goods imported are in connection with the initial setting-up of the industrial unit as contemplated in chapter Heading 98.01. Column 3 of the chapter heading 98.01 takes in all items of machinery as well as components required for the initial setting-up or an unit or the substantial expansion or the existing unit of specified plant etc. Coloum 3 besides referring to all such items of machinery, also refers to the following :- "and spare parts, other raw materials (including semi-finished material) or consumable stores not exceeding 10% of the value of the goods specified above provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in 1 to 6 above".

9. The respondents had contended before the Collector (Appeals) that the spares imported were meant essentially for the maintenance of the industrial plant viz. cinematogrpahic Laboratory and the value thereof did not exceed 10% of the value of the equipment originally imported, for initial setting-up of the Loboratory and this

contention was accepted by the Collector (Appeals). This factual position is not seen contraverted in the appeal memorandum filed by the department. We, therefore, hold that spares imported would fall within the scope of chapter Heading 98.01 and therefore respondent would be entitled to the benefit of concessional rate of duty, if condition of registration is satisfied.

10. The last contention urged is that the contract for import of spares had not been registered before the importation as required in Regulation 5 of the Regulations.

11. In this connection, reliance is placed on the decision in Mihir Textiles Ltd. - 1997 (92) E.L.T. 9 (S.C.) wherein it was held that the requirement of registration of the contract under the Regulations is mandatory. The Collector (Appeals) observed that the contract for supply of spares is not an independent contract but only a continuation of the original contract which had been duly registered. If that be so, according to respondent, registration was necessary not under Regulation 5 but under Regulation 6. It is stated by the representative of the respondent, an application for that purpose was initially made on 8-6-1982 and this was followed by another letter on 29-7-1987.

Copies of these records are not before us. This is essentially matter for verification.

12. In the circumstances, we are inclined to give respondent an opportunity of showing that application as contemplated under Regulation 6 was filed in accordance with law.

13. For the reasons aforesaid, we set aside the impugned order passed by Collector (Appeals) and remand the case to the jurisdictional appellate authority for decision on the appeal afresh after giving respondent an opportunity to substantiate that application under the Regulation 6 had been lawfully filed. It is made clear that other aspects dealt with in this order are concluded by this order.