

Collector of Central Excise Vs. Peripheral India

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-1998

Reported in : (1998)(62)ECC212

Appellant : Collector of Central Excise

Respondent : Peripheral India

Judgement :

1. Both these appeals have been filed by the Collector of Central Excise, New Delhi against the combined order-in-appeal bearing No. 304 and 305-CE/DLH/91 passed by the Collector of Central Excise (Appeals), New Delhi holding the respondents herein to be eligible for the benefit of exemption available under Notification 175/86, dated 1-3-1986. The facts of the case in respect of the two appeals are as follows.

2. Respondent, M/s. Peripheral India, New Delhi was availing exemption under Notification 175/86 in respect of their factory registered with the Director of Industries, New Delhi. In February, 1989, they shifted the factory to a new location and applied for change of registration to that authority. Pending the receipt of the new registration certificate showing the changed address, respondent continued to manufacture excisable goods and clear them from the new premises under the aforesaid notification. This was objected to by the department on the ground that as far as the new premises were concerned, respondent was not having small scale industry registration and hence exemption was not available. The adjudication order passed by the Assistant Collector of Central Excise to that

effect was successfully challenged before the Collector (Appeals) leading to the present appeal.

3. The second respondent herein, M/s. Paras Electricals (P) Ltd. had been availing of exemption under the same Notification from the; inception of their factory in 1983. In the earlier stages they were availing of exemption under Notification 77/83 and thereafter Notification 77/85. After the introduction of the new Tariff w.e.f.

28-2-1996 (sic) and the issue of Notification No. 175/86, dated 1-3-1986 they started availing of that Notification. It was informed during the hearing by Shri Anil Jain, Director of the respondent company that they had not registered themselves with the Director of Industries and were availing the exemption on the strength of paragraph 4 read with proviso (b) thereunder since they had been availing of the same exemption in the previous years. In August, 1989 respondent shifted their factory to a new location and continued to manufacture and clear excisable goods availing of the exemption under the same notification. The department objected to respondent's continued availment of the exemption even after shifting to new location. This was on the premise that the earlier availment of exemption and the availment in the earlier years cannot be taken to be from the same factory as located in the new address. It was the stand of the departmental authorities that the factory in the new location is a new factory and the benefit of previous year's clearances in terms of Notification 175/86 which entitles a manufacturer to get the same benefit for a succeeding year which is permissible under paragraph 4 read with proviso (b) is not available in view of the changed address and the factory being treated as a new factory. This finding was reversed by the Collector (Appeals) on appeal by the respondent herein.

Thereby the present appeal.

4. Shri S. Nunthuk, learned Departmental Representative adopted the reasoning contained in the department's appeals and pleaded that the impugned order-in-appeal may be set aside and the order of the respective Assistant Collectors restored. In particular he referred to the contention raised in the appeal that if paragraph 4 of the said notification is construed in the manner adopted in the

order of Collector (Appeals), Delhi leading to a situation which did not appear to be the intention at all of the Government because in that case a manufacturer who availed of exemption under the said notification during the previous financial year in respect of goods manufactured in a particular factory he would be eligible for exemption manufactured by him during the next financial year in his other factories which cannot be the intention of the Government.

5. Replying to the submissions of the learned Departmental Representative, Shri Naveen Mullick, learned Counsel for M/s.

Peripheral India invited our attention to the Tribunal decision in Collector of Central Excise v. S.K. Engineering & Trading Co. reported in 1993 (68) E.L.T. 240 in which it had been held that change of location of factory of a manufacturer will not disentitle him to the benefit of exemption available under Notification 175/86. In this order the Tribunal has taken note of the reference made in the impugned order of the Collector (Appeals) to his earlier Order-in-Appeal Nos. 304 and 305/91, dated 14-3-1991 which he had followed. Relevant observations and the findings of the Collector (Appeals) in these two orders have been extracted by the Tribunal. In their order the Tribunal upheld the order of the Collector (Appeals). The previous orders referred to and followed by the Collector (Appeals) in his said order are the subject matter of the present appeals. Since the Tribunal has, in the S.K.Engineering Trading Co. matter upheld the Collector's findings and dismissed the departmental appeal, it would be appropriate for the Tribunal to consider following the same decision. Shri Mullick also referred to Board's letter F. No. 384/289-94/93, dated 17-12-1993 which has been communicated in Trade Notice No. 36/1994, dated 8-4-1994 of Meerut Collectorate. In this it has been mentioned that the Board's decision was that the benefit of Notification 175/86 will continue to be available even for the period for which registration of new premises was not endorsed in the Registration Certificate.

6. On behalf of the second respondent, Shri Anil Jain, their Director adopted the reasoning of Shri Naveen Mullick and added that in their case they were not registered either in the old address or in the new one. They were availing of the exemption only on the strength of proviso (b) to paragraph 4 of the said exemption

Notification on the strength of the fact that they were availing of the exemption available under that Notification in the previous year. The wording of this paragraph is with reference to a manufacturer manufacturing goods in a factory. There is no requirement under this proviso or in any part of the notification that such availment should be in a factory situated in any particular address only and that if the location is shifted, the factory in the new premises will not get the benefit of the clearances effected from the earlier location but belonging to the same manufacturer. The emphasis is on clearances by a manufacturer irrespective of the actual location of the factory and it is not limited to the particular location.

7. We have considered the rival submissions. We have perused the record as well as the Tribunal decision cited by Shri Naveen Mullick. The ground taken in the appeals that if the interpretation adopted by Collector (Appeals) in his impugned order were to prevail, it would lead to a situation where a manufacturer availing of exemption in a particular year would be free to claim such a benefit from any number of new factories in the succeeding year. We do not accept this view as in such an eventuality the provisions of the notification require the clubbing of clearances of goods manufactured by a manufacturer from one or more factories or conversely from a single factory by one or more manufacturers. Once the clubbed value of clearances by a manufacturer from more than one factory exceeds the different ceilings prescribed in the Notification they would be dealt with appropriately.

8. The contentions raised in support of the impugned order-in-appeal on behalf of both the respondents is valid in law and has found favour with the Tribunal in the reported decision cited above. We share the same view. We find that paragraph 4 which contains the stipulation that the benefit of exemption is available to goods manufactured in factories registered with the Director of Industries or the Development Commissioner (Small Scale Industries) stands relaxed under the proviso thereunder. Sub-clause (a) of the proviso covers situations where the value of clearances is less than Rs. 7.5 lakhs in the relevant year of the preceding year. Sub-clause (b) of the proviso contains an alternative relaxation where the clearances may exceed the aforesaid ceiling for the manufacturer has availed the benefit of exemption under this Notification in the previous year. As long as this

requirement is satisfied it gives immunity from the requirement of registration with the concerned Director of Industries or Development Commissioner, as the case may be. Once this is established, the benefit available cannot be denied on the ground that the manufacturer has shifted his premises to another place. This very issue stands covered by the Tribunal decision cited. This is also reflected in the instructions of the Board referred to earlier.

9. On the above reasoning, we see no reason to interfere with the impugned order-in-appeal and accordingly uphold the same. The appeal is dismissed.w

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