Cosmos Ferrites Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-23-1998

Reported in : (1999)(105)ELT169TriDel

Appellant : Cosmos Ferrites Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In these cases, benefit of Notification 217/86, dated 1-3-1986 has been denied to soft ferrite powder manufactured by the appellants herein and partly consumed by them in the manufacture of soft ferrite components, and partly cleared on payment of duty and exported under bond. The benefit has been denied for the reason that the appellants cleared soft ferrite components to the Santacruz Electronics Export Processing Zone, at nil rate of duty under Notification 186/75 dated 21-8-1975. Since the clearances to SEEPZ were effected at Nil rate of duty, demands were raised by several show cause notices covering the period 30-7-1990 to 20-3-1991. The demands were confirmed by the authorities below. Hence these appeals.

2. We have heard Ms. Ginny Bedi who submits that the Tribunal has decided in the case of Indian Aluminium Co. v. CCE reported in 1995 (79) E.L.T. Ill that Notification No. 33/92 dated 1-3-1992 by which the expression contained in Notification 217/86 was expanded so as to read "provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a 100% Export Oriented Unit),

which are exempt from the whole of duty of excise leviable thereon or are chargeable to Nil rate of duty", is retrospective in operation. She submits that since the amending Notification 33/92 has been held to be retrospective in operation, Notification No. 4/92 amending Notification 186/75 in the same manner as Notification 33/92 should also be treated to have retrospective operation and, therefore, cover the period in dispute in these appeals, and as a result, the impugned orders would require to be set aside and the appeals allowed.

3. Learned DR, Shri Jain on the other hand brings to our notice the decision of the Tribunal reported in 1994 (70) E.L.T. 742 in the case of CCE v. Bio-ethical Pharma P. Ltd. in which the Tribunal has held that Notification No. 119/89 dated 27-4-1989 raising the limit of aggregate clearances prescribed in Notification 175/86-C.E., dated 1-3-1986 to Rs. 200 lakhs (from the earlier limit of 150 lakhs) is not to be given retrospective effect and the benefit under the amending notification cannot be given to earlier clearances. He submits that in the present case also, the Tribunal may be pleased to hold that amendment to Notification 186/75 and 217/86 may be held to be prospective in operation and the demand confirmed since they were for a period prior to the coming into effect of the amended notification.

4. We have considered the submissions of both sides. We find that in an identical situation of the amendment to Notification 217/86 the Tribunal in the case of Indian Aluminium Co. cited supra has held that the amendment introducing the expression "other than those cleared either to a 100% EOU or to a Unit in free trade zone" is clarificatory in nature and such clarificatory notification has retrospective effect (see para 12 of the Indian Aluminium judgment). Since the issue is directly covered by this decision of the Tribunal, we hold that the appellants are entitled to the benefit of Notification 217/86, set aside the impugned orders and allow the appeals.