

Commr. of C. Ex. Vs. Excon Bldg. Material Mfg. Co. Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-1998

Reported in : (2000)LC235Tri(Delhi)

Appellant : Commr. of C. Ex.

Respondent : Excon Bldg. Material Mfg. Co. Pvt.

Judgement :

1. The issue involved in this appeal by the Revenue is the eligibility to exemption under Notification No. 64/88 of hollow concrete blocks manufactured by M/s. Excon Building Material Manufacturing Co. Pvt.

Ltd. While approving the classification the Assistant Collector allowed the said exemption. The Revenue filed an appeal against this on the ground as under : "The contention of the party that as the exemption Notification expressly mentions Blocks, Slabs, lintels etc. the same are independently and Ipso facto exemption and accepted by the Collector of Central Excise (Appeals), Bombay is correct. Notification No. 64/88 also clearly goes on to add that such blocks, slabs, lintels etc. are dependent on end-use and that they should essentially be part and components of pre-fabricated building and therefore, what necessarily follows is that such blocks, slabs, lintels etc. should be used in the pre-fabricated building as parts and components thereof. The assessee has at no stage been able to produce any evidence to the effect that such blocks/Tee sections were used as parts/components of pre-fabricated building.

Further, it appears that Collector of Central Excise (Appeals) has entirely relied on IS specification (Part I) 1979 Para 0.3 of the forward and concluded that masonry work is a must for any pre-fabricated building, however, as depicted from the literature submitted by the part it can be seen that the Cement hollow blocks, Cement solid blocks and Tee sections cannot be used unless regular foundation work with proper reinforcement is carried out prior to its use. Thus they would be pre-fabricated building in itself and correctly classifiable under sub-heading 9406.00 of the Central Excise Tariff Act, 1985." The Collector (Appeals) however, confirmed the order of the Assistant Collector on the ground that the department seems to be under the presumption that no foundation and masonry work is required for the pre-fabricated building which is not correct. The order also took note of ISI specification for concrete masonry and came to the conclusion that masonry work is a must for any pre-fabricated building. The blocks are manufactured according to ISI specification and therefore, would be entitled to exemption under Notification 64/88.

2. Arguing the appeal of the Revenue, Shri Sangia, learned DR submits that the exemption in question is for blocks etc. constituting intermediates and components of pre-fabricated building falling under Heading 94.06. He refers to the literature produced by the appellants and submits that the blocks in question are only building blocks for concrete masonry work. He in particular refers the following: "Hollow concrete block walls should be planned on the basis of modular coordination with a view to making the maximum use of full and half length units. Modular planning results in minimum of cutting and proper fitting of units by the mason, which means speedier work, neater appearance of the finished walls and economy in construction.

Excon hollow concrete blocks of 200 series are ideal for constructing load bearing exterior and interior walls. For partitions and non-load bearing walls 150 series and 100 series blocks are suitable.

Without providing any structural reinforcement, it is possible to provide with the help of Excon blocks a structure with ground plus two upper floors. With proper attention to provision of reinforcement at suitable locations, structures with 15 to

20 storeyes have seen constructed abroad.

Hollow concrete block is an important addition to the types of masonry units available to the builder and its use for masonry work is on constant increase in this country. Some of the advantages of hollow concrete block construction are reduced mortar consumption, light weight and greater speed of work compared to brick masonry. Concrete block masonry is well known in many countries of the world and experience in these countries has added considerably to the knowledge and confidence about its role in building construction." Shri Sangia submits that the objection to the grant of exemption as is clear from the review order of the Commissioner was that the buildings which would be constructed by the use of the hollow and solid concrete blocks in question involves considerable foundation work and masonry work unlike pre-fabricated buildings which are assembled at site without much masonry work. Shri Sangia submits that the point is that there is more masonry work than foundation work. He submits that the blocks in question are basic construction material and are not intermediates or compounds which can be used in prefabricated buildings. Shri Sangia submits that in view of this the product was not entitled to exemption at all and the order of the Collector (Appeals) was not legally correct.

3. Countering the arguments of Shri Sangia, Shri Nambirajan Id. Advocate submits that the blocks in question are very different from blocks which are used in construction. Their size is much larger than that of normal blocks or bricks. They are eligible to be treated as pre-fabricated buildings falling under Heading 94.06. He drew our attention to the HSN notes and submitted that even materials for assembly or finishing of pre-fabricated buildings like plaster motor electric work are to be treated as parts of pre-fabricated structures provided that they are presented in appropriate quantities together with prefabricated structures. He also submits that the appeal of the Revenue is to be dealt with within the scope of review order. This order had taken the ground that pre-fabricated buildings are assembled at site without much of foundation and masonry work. He submitted that the learned DR is trying to make a new case at the Appellate stage which is not permissible in view of the Supreme Court decision in 1996 (88) E.L.T. 641 in the case of Reckitt & Colman India Ltd. 4. We have perused the records of the case and have

considered the rival submissions. We find that the exemption under the Notification is with particular reference to items "constituting intermediates and components for pre-fabricated buildings". In the instant case, the hollow blocks are claiming this exemption. From the literature produced before us, we find that these blocks are specifically stated to be used in masonry work. The literature nowhere mentions that the blocks are manufactured according to any particular design so as to become intermediates or components of pre-fabricated buildings. They appear to be only substitute for bricks which are used in traditional construction works. The method of construction mentioned in the literature is also the traditional method of construction and not pre-fabricated building construction. In the circumstances, we are not able to agree that these blocks qualify to be intermediate or components of pre-fabricated building. We therefore, hold that they were not eligible for exemption under Notification No. 64/88. With regard to the objection that Revenue should not be allowed to make a new case at this stage, we find that the objection taken from the beginning by the Revenue was that the products in question are for masonry work. Therefore, we are not able to uphold this objection.

In the result, the appeal of the Revenue succeeds and is allowed and the impugned order is set aside.

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