

Miraj Electricals and Mechanical Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-1999

Reported in : (1999)(111)ELT616TriDel

Appellant : Miraj Electricals and Mechanical

Respondent : C.C.E.

Judgement :

1. Matter called. None for the appellant. They have however desired that the appeal to be decided on the basis of available records and their written submissions filed by them on 6-4-1998.

2. Briefly stated the facts of this case are as follows : The appellants herein were manufacturing excisable goods and availing the benefit of full exemption from duty under Notification No. 46/81-C.E.on the ground that their factory was not covered under Clause (m) of Section 2 of the Factories Act. This notification however, was superceded by another Notification No. 178 / 85 which provided exemption to excisable goods up to a certain limit from First day of April of any financial year. One of the conditions of Notification No.178/85-C.E., dated 1-8-1985 was the aggregate value of the clearances of all excisable goods by a manufacturer or on its behalf for home consumption for one or more factories would not exceed Rs. 75 lakhs during the preceding financial year.

3. In the present case, it is not disputed that the clearances of the appellants from his factory during the preceding financial year 1984-85 has exceeded Rs. 75

lakhs.

4. Another Notification No. 77/85 was in existence with effect from 1-4-1985 which stipulated full exemption up to Rs. 20 lakhs, then slab exemption for another Rs. 10 lakhs subject to certain conditions. One of the conditions in the Notification No. 77/85-C.E. was that the aggregate value of clearances of excisable goods from the factory by a manufacturer or on his behalf would not exceed Rs. 75 lakhs.

5. In order to compute the clearances under Notification No. 77/85, the explanation II was also added as to how the computation of clearances were to be made under Clause (Q) of the said Explanation II. It was stated that clearances of excisable goods which are exempted from the whole of the duty of Excise by any other notification and for the time being in force, shall not be taken into account.

6. A question has therefore, arisen in this case whether the clearances made under Notification No. 46/81-C.E. during the preceding financial year in terms of paras 3(a) of Notification No. 77/85 read with Explanation II(a) can be taken into account or not. Contention of the appellants is that since during the preceding financial year i.e.

1984-85 Notification No. 46/81-C.E. was in force, clearances under the said notification will not have to be taken for determining the aggregate clearances under para 3(a) of Notification No. 77/85. Revenue on the other hand contends, as also found by the lower authorities, that the expression 'for the time being in force' rules out the application of Notification No. 46/81-C.E. for determining the clearances under Para 3(a) of Notification No. 77/85 inasmuch as Notification No. 77/85 comes into play for the first time with effect from 1-8-1985 as the appellants are seeking the benefit of this Notification only from this date i.e. 1-8-1995. This finding of the lower authorities in our view is correct inasmuch as the proper meaning for the expression 'for the time being in force' has to be given. It only means that the Notification under which goods were cleared without payment of duty and required to be excluded, is also to be in force at the time of computing the clearances under Notification No. 77/85.

Since from 1-8-1985, Notification No. 46/81-C.E. has ceased to be in existence, clearances under Notification No. 46/81-C.E. cannot be taken into account for computing the clearances under Notification No.77/85-C.E.7. Another plea taken by the appellants is that the Notification No.77/85-C.E. comes into force from 1-4-1985. At that point of time, the Notification No. 46/81-CE was also in force. Therefore, according, to the appellants, clearances for the preceding financial year 1984-85 will not be taken into account for determining the computation under provisions of para 3(a) of Notification No. 77/85 since Notification No. 46/81-CE gives full exemption to the goods cleared by the appellants. Therefore, according to the appellants, the said clearances should not be taken into account for determining the benefit of exemption Notification No. 77/85. This plea of the appellants is also not sustainable on the ground that they are claiming the benefit of this exemption namely 77/85 only with effect from 1-8-1985. Therefore, all the provisions of Notification No. 77/85-CE can be invoked only with effect from that date and not from any earlier date.

8. In view of the foregoing discussion, we agree with the findings of the lower authorities namely Collector of Central Excise that the appellants would not be entitled to the benefit of Notification No.77/85-CE with effect from 1-8-1985 inasmuch as their clearances during the preceding financial year 1984-85 had exceeded Rs. 75 lakhs.

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