Commissioner of Central Excise Vs. Vanasthali Textiles Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-28-1999

Reported in : (1999)(114)ELT607TriDel

Appellant : Commissioner of Central Excise

Respondent : Vanasthali Textiles Ltd.

Judgement :

1. In this appeal filed by the Revenue, the respondents are M/s.

Vanasthali Textiles Ltd., Shahjahanpur (Raj.). The matter relates to the requirement of certificate to be issued by the Development Commissioner in terms of the 4th Proviso in Notification No. 2/95-CE., dated 4-1-1995, before its amendment vide amending Notification No.4/98. Following the Board's circular issued under F. No. 268/63/97-CX.8, dated 18-2-1998, the Commissioner of Central Excise (Appeals) had allowed the appeal filed by M/s. Vanasthali Textiles Industries Ltd. 2.I have heard Shri D.K. Nayyar, JDR for the appellants/Revenue and Shri V.M. Verma, Consultant for the respondents.

3. I have carefully considered the matter and have given due consideration to the submissions made by both the sides.

4. I find that under the 4th Proviso of Notification No. 2/95-C.E., dated 4-1-1995 for the clearances of the goods from the factory of the 100% Export Oriented Units, into the domestic tariff area, a certificate was required from the concerned

Development Commissioner.

It is further seen that the Development Commissioner was issuing the sale permission for sale in the domestic tariff area and it was considered that the certificate by the same authority was only a duplication of work. The Ministry of Commerce had represented that when the sales were effected in the domestic tariff area under the permission of the Development Commissioner, asking for a separate certificate on this account was not necessary. The Board had agreed and had issued the circular dated 18-2-1998 relied upon by the appellate authority. Subsequently, the notification was also suitably amended.

5. The ld. JDR referred to the grounds of appeal and in particular, referred to ground No. 4, wherein the appellants had pleaded as under :- "The Commissioner (Appeals) while issuing the order has relied only upon the Board's Circular No. 375/8/98-CX, dated 18-2-1998, wherein it has been advised that the sale permission letter should be treated as the requisite certificate. This clarification did not have the necessary legal backing and is, therefore, not sustainable under the law because the para-2 of the said Circular, which has totally been ignored by the Commissioner (Appeals), conveyed the proposal of the Government to amend the Notification No. 2/95-C.E., dated 4-1-1995. Further, no letter, or clarification from the Ministry or anyone else can either over-rule, or supersede specific legal stipulations." 6. I have gone through the certificate issued by the Ministry and it had been clarified therein that the sale permission letter issued by the Development Commissioner to the Export Oriented Units covering both quantity and value for clearance, should be treated as a certificate under the Notification No. 2/95-C.E., dated 4-1-1995.

7. Keeping in view the circumstances in which the certificate was issued, I do not agree with the plea of the appellants., Commissioner of Central Excise. I do not find any infirmity in the view taken by the ld. Commissioner of Central Excise (Appeals). As a result, the appeal filed by the Revenue is rejected. Ordered accordingly.