

Electrical and Electronics Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-06-1999

Reported in : (1999)(84)LC911Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Electrical and Electronics

Respondent : Cce

Judgement :

1. M/s. Electrical and Electronics Corpn. were located at R.K. Sharma Compound, Walbhat Cross Road, Goregaon (E), Mumbai-400 063. They filed a declaration as required under Rule 174 on 16.4.1986. In this declaration, the benefit of notification No. 175/86 was claimed on the ground that the value of clearance in the preceding year was Rs. 7.5 lakhs. In 1989, they applied for and were given L-4 licence. After that they filed classification lists from time to time claiming the benefit of Notfn. No. 175/86 as it existed then. On 29.11.1989, they wrote a letter to the jurisdictional Supdt. informing that they had shifted their factory to another location viz. Bharat Industrial Estate, Goregaon (E). They requested the Supdt. to cancel L-4 licence. On 2.9.1991, they were granted a fresh L-4 licence. The classification list filed showing the new address was duly approved by the Asstt.

Commissioner in March/April, 1992. On 10.6.1992 a show cause notice was issued demanding differential duty on the ground that the benefit of the exemption notification was wrongly taken. The Asstt. Commissioner in his order held that the unit was not registered with the SSI Directorate. He further observed that the other provisions of the notification were not applicable. He, therefore, confirmed the demand.

The assessee then filed an appeal. The Collector (Appeals) observed that since the unit had started working only from 5.12.1991, they could not avail of the alternate provision. He observed that at the material time the unit was not registered with SSI Directorate. He distinguished the facts before him from the cited judgement of the Tribunal in the case of S.K. Engineering and Trading Co. 1993 (68) ELT. On this analysis he upheld the lower order leading to the present appeal.

2. We have heard Shri Rangawani, the Id. consultant for the appellants and Shri Patwari, the Id. DR for the revenue.

3. The factual narration made above shows that the identity of the manufacturer had remained the same in spite of the relocation of the factory from one industrial estate to other industrial estate. The manufacturer first located was not registered with the Directorate of Industries or with the SSI. The relocated factory was also not registered. On this ground, both the authorities below had refused to extend the benefit. We however, take note of the submission of Shri Rangawani that whereas Clause (a) of the first proviso to paragraph 4 of the notification refers to a "factory", the Clause (b) refers to a "manufacturer". In terms of these clauses, where a manufacturer was availing of the benefit of the same notification during the preceding financial year, the benefit of the notification would be available for the succeeding financial year. Even if it is

to be taken that the new factory was entirely a different one, then also the benefit of the notification would be available.

4. The Id. consultant placed before us a number of judgements. The only judgement which has direct bearing on the facts of the case is that of CCE, New Delhi v. Asclepius Pharmaceuticals Private Ltd. 1997 (20) RLT 417. In this case, in identical circumstances, where a factory had shifted from one location to another, it was held that the benefit of the cited notification would be available.

5. On perusal of the facts and the law, we allow this appeal, set aside the impugned order and direct consequential relief to the extent warranted.

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