Collector of Central Excise Vs. Impreg and Insulations

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-1999

Reported in : (1999)(112)ELT292TriDel

Appellant : Collector of Central Excise

Respondent : impreg and Insulations

Judgement :

1. The Revenue filed this appeal against the order-in-appeal dated 26-4-1995 passed by the Collector of Central Excise (Appeals), New Delhi.

2. Brief facts of the case are that the respondents are engaged in the manufacture of unsaturated polyester resins falling under sub-heading 3937.91 of the Central Excise Tariff Act, 1985. The respondents claimed exemption from excise duty under Notification No. 70/77, dated 7-5-1977 on 1600 kgs. of unsaturated polyester resins. A show cause notice was issued to the respondents stating therein that the benefit of Notification No. 70/77 is not available to the goods, in question, as the goods were not supplied to the Indian Navy as stores on board. The adjudicating authority dropped the proceedings. The Revenue filed the appeal and the same was rejected.

3. Ld. J.D.R., appearing on behalf of the Revenue, submits that the notification provides exemption from payment of central excise duty on the goods supplied as stores on board a vessel of Indian Navy. He submits that the goods were not directly supplied to the Indian Navy but the good, in question, were supplied by the

respondents to one M/s.

Sagar Manthan Hitaishi, New Delhi and M/s. Sagar Manthan Hitaishi used these goods in the manufacture of whalers and these whalers were supplied to the Indian Navy. He submits that the goods, in question, were not supplied to the Indian Navy as stores for consumption on board. He, therefore, prays that the appeal be allowed.

4. Ld. Counsel appearing on behalf of the respondents, submits that the goods were supplied for manufacture of whalers, which were later on supplied to the Indian Navy. Therefore, the respondents are entitled for the benefit of notification. He also relied upon the clarification dated 30-12-1989. He, therefore, prays, that the appeal be dismissed.

5. In this case the question involved is whether un-saturated polyester resins, which were, manufactured by the respondents and supplied to M/s. Sagar Manthan Hitaishi and were used in the manufacture of whalers are entitled for the benefit of Notification 70/77-C.E. "In exercise of the power conferred by Sub-rule (1) of the Rule 8 of the Central Excise Rules, 1944 read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) the Central Government hereby exempt the excisable goods (other than cigarettes) supplied as stores for consumption on board a vessel of the Indian Navy, from the whole of the duty of excise leviable thereon under the Central Excises and Salt Act, 1944 (1 of the 1944) and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957)." The above mentioned notification exempts the goods from payment of excise duty supplied as stores for consumption on board a vessel of the Indian Navy.

6. Section 2 of Customs Act, 1962 defines stores as goods for use in the vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

7. It is admitted by the respondents that the goods, in question, were not directly supplied to the Indian Navy. The respondents relied upon the Boards Clarification dated 30-12-1988. We find that in this clarification, the Board has clarified the

intention of the Government to grant exemption from Central Excise duty not only to the excisable goods, which are used for running and maintenance of vessel of the Indian Navy but also all the excisable goods, which are meant for consumption of the crew members. We find that this clarifiation is not helpful to the respondents in the present case.

8. As the excisable goods are supplied by the respondents not as stores for consumption on board a vessel of the Indian Navy, therefore, we hold that the benefit of Notification No. 70/77 is not admissible to the goods, in question. The impugned order is set aside and the appeal is allowed.