Cce Vs. Textiles Auxillaries and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-21-1999

Reported in : (2000)(88)LC153Tri(Mum.)bai

Judge : S Bhatnagar, S Kang, A T V.K.

Appellant : Cce

Respondent : Textiles Auxillaries and

Judgement :

1. The Common issue involved in these three appeals filed by the Revenue is whether the benefit of Notification No. 175/86 was available to the excisable goods cleared by M/s. Textile Auxiliaries and Chemical Industries during the period from 1.4.1992 to 21.5.1992.

2. When the matter was called no one was present on behalf of the respondents in spite of notice issued to them. In fact the Postal Department had returned the notice with remark 'NOT CLAIMED'. We, therefore, heard Shri A.M. Tilak learned D.R., and perused the records.

The learned D.R. submitted that the Assistant Collector denied the benefit of Notification No. 175/86 to the respondents during the period from 1.4.1992 to 21.5.1992 in view of notification No. 55/92 which amended Notification No. 175/86 and classified the product Textile Binder under heading No. 3906.90 of the Schedule to the Central Excise Tariff Act. However, on appeal by the Respondents the Collector (Appeals) under the impugned common order dated 25.1.1995, set aside the three adjudication orders holding that the Textile binders are classifiable under sub-heading No. 3809.00 of CETA and the benefit of Notification No. 175/86 was available to them as per para 4(b) of the said notification since they were availing exemption from payment of duty under various Notifications mentioned in para 4(b) of the unamended Notification. The learned D.R. further, submitted that Notification No. 175/86 was amended by Notification No. 55/92 dated 31.3.1992; that the respondents were not registered as small scale industrial unit with the Director of Industries and the value of clearance of the excisable goods manufactured by them had exceeded Rs. 7.5 lakhs in the preceding financial year 1991-92; that accordingly they were not eligible for benefit of Notification No. 175/86 dated 1.3.1986; that the amending Notification No. 67/92 dated 22.5.1992 was effective only from the date of issue i.e. 22.5.1992 only and could not be applied retrospectively as it reads as under: provided also that nothing contained in the preceding proviso shall apply on and from 22nd day of May, 1992 to the 31st day of March, 1993.

3. He finally submitted that the issue has been settled by the Appellate Tribunal in the case of CCE v. Ideal Graphic Industries 1998 (29) RLT 246.

4. We have considered the submissions of learned D.R. and perused the records. The Revenue has not challenged the classification of the Textile binders as ordered by the Collector (Appeals). The Revenue has only appealed against allowing the benefit of Notification No. 175/86.

This Notification No. 175/86 was amended by Notification No. 55/92-CE dated 31.3.1992. In paragraph 4, for the second proviso, the following proviso was substituted: Provided further that nothing contained in Clause (b) of the first proviso shall apply in a case where a manufacturer who is manufacturing specified goods in a factory has availed of the exemption in pursuance of Clause (a) of the said proviso in any of the preceding financial year.

5. It is evident from this proviso that any unit whose clearance of goods had exceeded Rs. 7.5 lakhs in preceding financial year and was not registered as small scale unit would not be eligible for the benefit of Notification No. 175/86, as

amended. The Respondents have not rebutted the contention of the Revenue that their clearance had not exceeded Rs. 7.5 lakhs in the preceding financial year. There is a considerable substance in learned D.R's contention that the amendment effected by Notification No. 67/92 is effective only prospectively and not retrospectively which is apparent from the wordings of the amending Notification No. 67/92 which clearly provided that the second proviso shall not apply on and from 22nd day of May, 1992 to the 31st day of March, 1993. Accordingly, it cannot be claimed that the amendment brought out by Notification No. 55/92 was deferred with effect from 1.4.1992. In view of these facts and circumstances, we allow all the three appeals filed by the Revenue.