

Cce Vs. May Fair Electrical Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-26-1999

Reported in : (1999)(85)LC953Tri(Delhi)

Judge : P Jain, Vice-, A Unni

Appellant : Cce

Respondent : May Fair Electrical Industries

Judgement :

1. Question involved in the present matter is whether respondents' clearances in respect of some goods (electrical fittings) affixed with a brand name of another person not eligible to SSI Exemption and being cleared on payment of duty are to be clubbed with the clearances of the respondents herein of the same goods availing the benefit of exemption under Notification 175/86-CE.2 Revenue contends that for the purpose of computing the aggregate value of clearances under Clause (a) or (b) of Paragraph 1, that is, for the purpose of computing Rs. 30 Lakhs or Rs. 75 Lakhs clearances, the clearances of branded goods as aforesaid shall also be included.

3. Respondents on the other hand contends that value of branded goods shall not be reckoned in computing aggregate value of clearances under Clause (a) and (b) of Paragraph 1 of the said Notification, because such branded goods go out of purview of Notification 175/86-CE in view of Para 7 of the Notification.

4. At the outset Ld. Advocate Shri J.S. Agarwal points out that this question has been recently decided in favour of the assesseees in the case of *Mis. Jaina Detergent P. Ltd. v. CCE, Allahabad* vide Final Order No. 233/99-C dated 11.3.1999 1999 (85) ECR 115 (T). He, therefore, submits that in view of the said judgment of the Tribunal the present appeal of Revenue be dismissed.

5. We have heard the Ld. JDR, Shri V.M. Udhoji who reiterates the grounds taken in the Appeal Memo by the Revenue. Revenues' contention is that para 1 of the Notification stipulates 'first' clearance of Rs. 30 Lakhs. 'First clearance' will include all clearances whether duty paid clearances or not. On this reasoning it is urged that the clearances made by the respondents in respect of branded goods will be counted towards computation of Rs. 30 Lakhs clearances. Reliance has also been placed for the aforesaid reasoning on Board's clarification issued vide E. No. 345/35/87-TRU dated 29.10.1987.

6. We have carefully considered the plea of the Ld. JDR. Revenue forgets that clearance of branded goods in terms of para 7 of the Notification are not within the scope of the Notification itself.

Therefore question of reckoning the same for computing the clearances under Clause (a) and (b) of para 1 of the Notification does not arise.

Revenue's reliance on Tribunal's judgment of East Zone Bench in the case of *CCE v. India Potteries Limited* is a misapplication of that judgment to the facts and circumstances of this case. Therefore question of computing the clearances of branded goods which are outside the scope of Notification No. 175/86 does not arise.

At this stage Ld. JDR Shri V.M. Udhoji points out that *faina Detergent* case is applicable to Notification 1/93 and not to Notification 175/86.

This plea in our view is of no substance because the two Notifications are *pari-materia* in their content and intent. We may also mention at this stage that para 3 of the Notification significantly lays down that the clearances in respect of such branded goods shall not be taken into account for the purpose of computing the '

aggregate value of clearances of all excisable goods for eligibility under this Notification. Therefore, there is no reason why the same analogy should not be extended for the purpose of determining the computation under para 1. What has been considered as "non-excisable goods" for the purposes of this notification in terms of para 3, it is difficult to accept the proposition, that these are 'specified goods' for the purposes of computing clearances under para 1.

7. In view of the foregoing discussion and following respectfully the judgment of the Tribunal in the case of Jaina Detergent (Supra) we dismiss this appeal of Revenue.

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