

Muzaffarnagar Refractories P. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-02-1999

Reported in : (1999)(66)ECC661

Judge : J Balasundaram, N T C.N.B.

Appellant : Muzaffarnagar Refractories P.

Respondent : Collector of Central Excise

Judgement :

1. In these cases the benefit of exemption in terms of Notification 175/86 has been denied to the assessee herein w.e.f. 30.10.87 on the ground that they were registered with the DGTD, which registration acted as a bar to the availment of exemption with the issue of Notification 244/87 dated 30.10.87 amending the conditions of sub-para (b) of para 4 of Notification 175/86; as a result of denial demand of Rs. 1,03,044.42 has been confirmed and this gives rise to Appeal No.E/5526/92-D. The other two appeals viz. Appeal No. E/2505 and E/2506/92-D are for refund of duty paid under protest from December 87 onwards on the ground that the appellants are entitled to the benefit of duty free clearances.

2. We have heard Shri Bipin Garg, learned Counsel, who contends that the assessee applied for being registered as an SSI Unit in November 87 itself and the certificate of registration was issued in April 88 and that the certificate should be treated as effective from the date of application i.e. November 87 and that demand is partially barred by limitation for the period prior to 24.11.87, Since the

notice has been issued on 24.5.88 covering the period from 1.11.87 to December 87 and Shri R.S. Sangia, learned DR who submits that the very fact that the Unit has been registered with the DGTD is sufficient to debar it from availment of the benefit of the notification and that the plea of time bar is also not sustainable since the notice has been issued within six months from the relevant date i.e. within six months from the date of submission of RT 12 returns for the months of November 87 which would be filed in December 87.

3. On a careful consideration of the rival submissions and having regard to the clear language of amending Notification 244/87, we see force in the contention of the Revenue that the registration of unit with the DGTD is per se a disqualification for claiming the benefit of Notification 175/86, as amended. We also agree with the learned DR that the demand has been raised within time. Therefore, the appellants, contention both on the merits as well as on time bar falls. In the result, we uphold the impugned orders and reject the appeals.

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