Collector of Central Excise Vs. Texocaps

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-07-1999

Reported in : (2000)(67)ECC108

Judge : S Kang, a T V.K.

Appellant : Collector of Central Excise

Respondent : Texocaps

Judgement :

1. The issue involved in this appeal filed by the Revenue is whether the benefit of Notification No. 175/86 was available to the excisable goods cleared by the Respondents during the financial year 1992-93 (1.4.92 to 21.5.92) 2. When the matter was called no one was present on behalf of the Respondent who have requested to decide the appeal on merits in their letter dt. 9.8.99. We, therefore, heard Shri Jagadish Singh, Ld. DR, and perused the records. The Assistant Collector, under order dated 20.5.93 had denied the benefit of Notification No. 175/ 86 holding that the Respondents had availed exemption under para 4(a) of the Notification No. 175/86 during 85-86, clearance value being less than Rs. 7.5 lakhs and their clearance during 91-92 had exceeded Rs. 7.5 lakhs. On Appeal, the Collector (Appeals) allowed the assessee's appeal, holding that the Respondents had not availed of exemption under Clause (a) of Proviso to para 4 of Notification No. 175/ 86 and availed of only under Clause (b) and, therefore, the Notification No. 55/92 which amended Notification No. 175/96 will not adversely affect them.

3. The Respondents have submitted, in their written submissions that their unit was availing the S.S.I. exemption under Notification No.77/85 dt. 17.3.85 prior to 1.3.86 and, therefore, by virtue of Clause (b) of para 4 of Notification No. 175/86, they were eligible to the exemption from March 1986 onwards; that by amendment caused by Notification No. 55/92, only those manufacturers who have been availing the exemption under Clause (a) were debarred from the benefit of the Notification. They also relied upon the decision in the case of C.C.E.v. Assam Timbers .

4. The Ld. DR Shri Jagadish Singh reiterated the grounds of appeal contained in Appeal Memorandum and submitted that the issue is covered by the decision of the Tribunal in the case of D.B. Shingodia v. CCE, Bombay-I,C.C.E., Bombay v.Bamboat Press (P) Ltd. Final Order No.5. We have considered the submissions of both the sides. By Notification No. 55/92 dt. 31.3.92, the second proviso to paragraph 4 of the Notification No. 175/86 was substituted as under:-- Provided further that nothing contained in Clause (b) of the 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.

6. It is apparent from the proviso that any unit whose clearance of goods had exceeded Rs. 7.5 lakhs in any 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. It is mentioned in the grounds of appeal that the Respondents had exceeded the clearance value of Rs. 7.5 lakhs in the preceding financial year. This fact is not denied by the Respondents in their written submissions. This view was held by the Tribunal in the decisions referred to by the Ld. DR. In view of these facts, they were not eligible to avail of the exemption under Notification No. 175/86 as amended during the period 1.4.92 to 21.5.92.