Commissioner of Customs Vs. Shefali Arts

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-22-1999

Reported in : (1999)(114)ELT928Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Shefali Arts

Judgement :

1. The respondent to this appeal imported automatic chain making machines. The goods were cleared granting the benefit of Notification 159/86 according to which as amended and in force when the goods were imported, the machines were exempted from payment of duty if "used in the process and manufacture of gem and jewellery for the purpose of export" by registered exporters of gem and jewellery Cooperative Societies goldsmith and artisans subsequent to the clearance of the goods. The Directorate of Revenue Intelligence carried out investigations, which led to believe that the machines had been used for production of chains, part of which were exported, the remainder being sold in the local market. Notice was accordingly issued to the importer proposing disallowance of the notification on the ground that the condition that the machine should be used for the purpose of export had not been complied with. In the reply to the notice, the importer took the stand that a substantial portion of the goods manufactured of the value of goods Rs. 1.61 crores, had been exported between 1-4-1990 and 18-8-1992 and that therefore the condition of notification had been fulfilled. The Collector accepted the submissions. He said that the import trade

policy or the notification did not specify that the machine should be ex- clusively used for export production. In view of the substantial export production that had taken place, there was no case for denying the benefit of the notification. The appeal is against that order.

2. The ground in the appeal which the Departmental Representative explains, is that the relevant clause of the notification, which we have quoted above, makes it mandatory that the machine should be used exclusively for processing or producing jewellery for the purpose of export. In other words, he says if any part of the production of this machine is not exported, the benefit of the notification will not be available.

3. The Advocate for the respondent contends that in the absence of words in the notification providing that machine should be used exclusively or solely for production of goods for the purpose of export, the meaning sought to be given to it by the department is justified by the terms of the notification.

4. The notification requires that the machine should be used in the processing and manufacturing of gems and jewellery "for the purpose of export". If some part of the gem and jewellery processed or manufactured with the use of these machines, has been exported, it follows that the machines have been used for processing or manufacture for the purpose of export. In such a situation, it is true, that the machines have also been used for the processing and manufacture for the purpose of local sale. The fact of such use does not detract the use of the machine for the purpose of exports. The interpretation canvassed by the department, if amended, would add to the notification the condition that the machine must be used solely in the processing and manufacture of gem and jewellery for the purpose of export. That would for effect amount to adding words to the notification which are not present therein. If it were intention to limit the exemption to those machines which were to be used exclusively for production of goods for export that would have been made clear and qualifying the terms "used for the purpose of export" by the words "solely" or "exclusively".

5. The judgment of the Supreme Court in U.O.I. v. Tata Iron & Steel Company Ltd. - 1977 (1) E.L.T. (J 16) is illuminating in this regard.

Notification 30/60 partly exempted from Central Excise duty steel ingots in which duty paid pig iron is used The department was of the view that the benefit of the notification would be available to Tata Iron & Steel Co. Ltd. in respect of the ingots in the manufacture of which duty paid pig iron and non-duty paid pig iron had been used. The High Court, before which the matter went, refused to accept this contention. It said that the notification did not say that the exemption is granted only when duty paid pig iron is used. The exemption would be available if the duty paid pig iron were mixed with non-duty paid pig iron. Confirming this view the Court noted that if the intention behind the notification was to deny the exemption to duty paid pig iron when mixed with non-duty paid material the notification would have used the word "only" "exclusively" or "entirely" with regard to the duty paid pig iron. The same reasoning would apply to the words used in this notification. The Collector's finding that the machines have been used substantially for production of gem and jewellery has not been challenged. It is not as if the respondent used the machine only nominally for production for export, predominantly being for local production. Such, in any event, is not a department's case. We must therefore conclude that the use of the machines was in accordance with the condition of the notification.