Shanil Packaging P. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-11-2000

Reported in : (2000)(119)ELT255TriDel

Appellant : Shanil Packaging P. Ltd.

Respondent : Cce

Judgement :

1. In this appeal filed by M/s. Shanil Packaging Pvt. Ltd., the issue involved is whether the benefit of Notification No. 132/86-C.E., dated 1-3-1986 is available to the Lay Flat Tubing and H.M. HDPE bags manufactured by them.

2. When the matter was called, no one was present on behalf of the Appellants inspite of issue of notice to the Appellants as well as to their Advocate. In fact the notice issued to the appellants has been received back from the postal authorities. We also observe that at the time of earlier hearings on 9-11-1999, no one was present on behalf of the appellants. We, therefore, proceed to take up the appeal for decision in absence of the appellants.

3. The learned SDR, appearing on behalf of the Revenue, submitted that the appellants manufacture polythelene bags and availed exemption from payment of duty under Notification No. 130/86; that the Collector, under the impugned order dated 11-1-1994, had confirmed the demand of Central Excise duty amounting to Rs. 50,281.65 and imposed a penalty of Rs. 30,000/-, denying them the benefit of Notification No. 132/86 on the ground that the raw material was received without

payment of duty as the suppliers were availing of full exemption under Notification No.175/86-CE, dated 1-3-1986; that appropriate payment of duty has to be adduced for claiming the benefit unless the Notification itself provides that all stocks of raw materials in the country would be deemed to be duty paid. He further submitted that it is well settled that it is for a person who claims exemption to establish his eligibility to the same. Reliance was placed on the decision in the case of Motiram Tolaram v. U.O.I., 1999 (112) E.L.T. 749 (S.C.) wherein the Apex Court held that the onus is on assessee to prove and show that the conditions, if any, which are imposed by the exemption Notification have been satisfied. In this case the Apex Court did not extend the benefit of concessional rate of duty to the imported polyvi-nyl alcohol as the raw material, used in the manufacture of Polyvinyl alcohol, had not been subjected to the appropriate amount of duty payable under the Indian Law. The learned SDR contented that as the appellants have not satisfied the conditions of the Notification, the duty has been rightly demanded.

4. We have considered the submissions of the Revenue and perused the records. The exemption from payment of duty was available to the finished product, manufactured by the appellants subject to the condition that the finished goods were made out of goods falling under heading Nos. 39.01 to 39.15 of the Schedule to the Central Excise Tariff Act on which duty of excise leviable thereon has already been paid. It is well settled law that the onus is on assessee who is claiming the benefit of notification to show that the conditions, if any, subject to which benefit is available, have been fulfilled. In the present matter, the appellants have not substantiated their claim that they have satisfied the conditions imposed by the exemption notification. Accordingly, they are not eligible for the exemption under Notification No. 132/86. However, we agree with the appellants that the facts of this case does not warrant imposition of any penalty on them and we set aside the penalty. The appeal filed by the Appellants, but for this modification, is rejected.