Central Pulp Mills Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-2000

Reported in : (2001)(130)ELT642TriDel

Appellant : Central Pulp Mills Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal filed by M/s. Central Pulp Mills Ltd., the issue involved is whether the benefit of concessional rate of duty as per first slab of the Notification No. 138/86-C.E. dated 1-3-1986 is available to the Appellants from the date of opting for the Notification.

2. Shri Gopal Prasad, learned Advocate, first mentioned that he may be allowed to withdraw Misc. application No. E/M/8/99-C filed by the appellants. The prayer is allowed and the Misc. application No.E/M/8/99-C is dismissed as withdrawn. The learned Advocate submitted that the Appellants manufacture various types of papers; that they availed concessional rate of duty under Notification No. 139/86 during the financial year 1989-90; that they filed a revised classification list No. 2/89-90 effective from 3-10-89 claiming exemption under Notification No. 138/86 in respect of uncoated craft paper in rolls manufactured out of pulp containing not less than 50% by weight or Pulp made from conventional raw material; that the Assistant Collector, under Adjudication Order No. 61/90, dated 24-5-90, demanded differential duty amounting to Rs. 8,51,435.37 holding that as they had already cleared more than 3000 tons of paper with effect from 1-4-89 to the date

on which they started availing of Notification No. 138/86, they could clear the goods only under the second slab attracting higher rate of duty; that the Collector (Appeals) also upheld the Adjudication Order under the impugned Order dated 21-12-1990. The learned Advocate submitted that as they started availing of the Notification No. 138/86 only from 3-10-1989, their clearances for the purpose of slab rate should be reckoned from the said date as from that date only they have opted for the Notification. He relied upon the decision of the Appellate Tribunal in the case of Solar Packaging Pvt. Ltd v. C.E. 1999 (30) RLT 867 (CEGAT) and ESS ESS Engineers v. CCE, Chandigarh, 1999 (107) E.L.T. 596 (T) wherein it was held that "even a specified goods falling under one of the heading exceeds Rs. 15 lakhs, and the value of the first clearances of all other specified goods and having exceeded Rs. 30 lakhs, the other goods continue to enjoy the exemption till the aggregate ceiling of Rs. 30 lakhs. He further submitted that the Larger Bench's decision in Ramakrishna Engg. Works v. CCE, 1996 (13) RLT 170 is not applicable as in that matter only one Notification was involved whereas in the present matter two independent Notifications are involved; that the first clearance for the purpose of Notification No.138/86 would begin from the date they start availing the Notification.

3. Dr. Ravinder Babu, Learned D.R. submitted that the Appellants are only clearing paper and they had, already removed the same availing concessional rate of duty under Notification No. 139/86 from 1-4-89; that as such they had already exceeded the limit of quantity specified in the first slab of the Table annexed to Notification No. 138/86 (i.e.

3000 Tons); that the notification speaks of 'first clearance' which has already been exceeded by the Appellants. He distinguished the decisions in ESS ESS Engineers & Solar Packaging by submitting that in these cases more than one excisable goods was involved whereas in the present matter only one excisable goods is involved. He relied upon the decision in B.K. Rubber Industries (P) Ltd v. U.O.I. 1993 (68) E.L.T.575 (MP) and Ramakrishna Engg. Works, supra.

4. We have considered the submissions of both the sides. It is not disputed by the appellants that when they opted for Notification No.138/86, they had already

removed paper exceeding 3000 tons. This notification provides concessional rate of duty as under :---Sl. No. Quantity Rate---1.

First clearance upto an aggregate Rs. 300 per tonne not exceeding 3000 Tonnes.2 Clearances of an aggregate not Rs. 650 per tonne exceeding 4500 tonnes immedi- 4. The expression 'First Clearance' was interpreted by M.P. High Court in the case of B.K. Rubber Industries (P) Ltd. It was held by the High Court that "The intention of the Government was clearly to exempt first clearance i.e. the clearances in the chronological Order upto the aggregate value of Rs. 75 lacs. The intention is not to grant a total concession of Rs. 75 lacs on the goods cleared at any time during the financial year....The suggestion of the Petitioners that he could simultaneously clear the goods on full rate of duty would militate against the plain language of the Notification. It would convert an exemption granted to first clearance in the chronological order into a concession granted on the aggregate sale during the entire financial year to be taken on such clearances as the manufacturer deems fit." The Appellants had already cleared paper since 1-4-89, they cannot claim that the first clearance of Paper is taking place from 3-10-89. The ratio of two decisions relied upon is not applicable to the facts of present matter as the facts are different. In these matters, the issue was the availability of exemption in respect of more than one specified goods which is not so in the present matter as only one goods i.e.

Paper is being cleared by the Appellants. Accordingly, we reject the appeal filed by the Appellants.