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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-14-2000

Reported in : (2000)(121)ELT543TriDel

Appellant : Seamless Tubes and Technologies

Respondent : Collr. of Cus. and C. Ex.

Judgement :

1. In this appeal filed by M/s Seamless Tubes & Technologies India Ltd., the issue involved is whether the benefit of Notification No.175/86-C.E., dated 1-3-1986 is available to the goods manufactured by the Appellants during the financial year 1989-90.

2. The Appellants under their letter dt. 6-1-2000 have mentioned that they would not be appearing in person for hearing and requested to pass an appropriate order. We heard Shri M.P.Singh, Ld. DR on behalf of the Revenue and perused the records. The Assistant Collector, under Adjudication order-in-original No. 54/91, dated 8-5-1991 and adjudication order No. 43/92, dated 8-9-1992, approved the classification list filed by the Appellants effective from 15-3-1991 denying the concessional rate of duty under Notification No. 175/86 and confirmed the demand of duty, holding that the Appellants became the subsidiary unit of M/s Balaji Tubes Ltd. from 15-1-1988 and lost its independent identity as a SSI unit; that they applied for DGTD registration on 12-3-1990 which was granted on 12-9-1990; that they had not claimed concessional rate of duty under Notification 175/86 in their classification lists effective from 17-3-1989, 15-3-1990 and 1-4-

1990; that they became disentitled to Notification 175/86 from the date they become the subsidiary of M/s Balaji Tubes Ltd. On appeal the Collector (Appeal), under the impugned Order, observed that the appellants had given figures of clearances which showed that the value of their clearances was within the limit specified under Notification No. 175/86; that, however, the figures for 1986-87 were only in respect of job charges without including the cost of raw-material and manufacturing profit. He, therefore, directed that the figures of value of clearances for the years 1986-87, 1987-88 and 1988-89 should be verified by the Assistant Collector and if on verification it is found that the value of clearances during 1986-87 was within the limits specified under Notification No. 175/86 and for the year 1987-88 and 1988-89 were less than Rs. 150 lakhs, they should be granted exemption irrespective of the fact whether they had filed declaration or not. The Collector (Appeal), however, also ordered that the benefit of Notification should be extended to the Appellants only for the year 1990-91 and not for the year 1989-90 as para 4(b) is applicable only to those units which got registered with the DGTD, and since the Appellant got this registration only on 12-9-1990, the provisions of this para will be inapplicable for the year 1989-90.

3. We observe that para 4 of notification of 175/86 provides that the exemption shall be applicable to a factory which is registered with the Director of Industries in any state or the Development Commissioner as a Small Scale Industries under the provisions of IDR Act. Proviso to para 4 contains exceptions to this general provisions. Clause (b) of the proviso provided as under "Provided nothing contained in the Paragraph shall be applicable in a case where a manufacturer manufacturing specified goods in a factory, other than a factory which is registered under the Industries (Development and Regulations) Act, 1951 (65 of 1951) with the Directorate General of Technical Developments in the Ministry of Industry, and has been availing of the exemption under this Notification during the preceding financial year or the exemption in terms of Sl. No. 39 of the Table annexed to Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 53/88-Central Excise, dated 1-3-1988." 4. It is evident from the proviso that if the benefit of exemption under Notification No. 175/86 was availed of during the preceding financial year the benefit of the Notification shall be available to a factory which is not registered under the IDR Act with the DGTD. In

view of this specific provisions of clause (b) of proviso to para 4 of Notification No. 175/86/ the directions of the Collector (Appeals) that the benefit of the Notification should not be extended for the year 1989-90 as they were not registered with DGTD are not correct. We, therefore, remand the matter to the Assistant Commissioner for ascertaining the eligibility of the Appellants to the benefit of Notification No. 175/86 during the financial year 1989-90. The Appeal is thus allowed by way of remand.

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