Cce Vs. Devaki Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Hyderabad

Decided On : Jul-19-2000

Reported in : (2000)(93)LC542Tri(Hyd.)erabad

Judge : S Peeran, A T V.K.

Appellant : Cce

Respondent : Devaki Industries

Judgement :

1. The simple issue submitted for our consideration by Revenue in this appeal is whether the value of the electric fan bearing the brand name "ALMONARD" (which is admittedly not the respondent's brand name) should be included in the assessable value of clearances of the respondent while administering the duty exemption contained in the Exemption Notification No. 175/86 dated 1.3.1986. It is not disputed that the respondents have paid Excise duty on clearance of fans with Almonard brand as also that they have also cleared fans under their own brand name namely "DEVI". Despite repeated notices, the respondents are not present when the case was called in Court today.

2. Heard Shri M. Kunhi Kannan, Ld. DR who reiterates the grounds of appeal of Revenue. He stresses that since there is no clear prohibition contained in the said Notification to exclude such value of clearances of goods cleared on payment of duty as they bore another's brand name, therefore such value needs to be included and hence the demand confirmed by the Order-in-Original but upset by

the Order-in-Appeal impugned needs to be upheld.3. We have carefully considered these submissions and the records of the case. On a perusal of the order impugned, we find that the Ld.

Commissioner (Appeals) had allowed the present respondent's appeal before him after applying the ratio of the Tribunal's decision in the case of CCE v. Power and Control as in wherein the Hon'ble Tribunal had found as follows: The appellants are manufacturing Light Fittings both under their own brand name (PAC) and 'Bajaj' brand name. It is an admitted fact on record that the appellants are not enjoying the benefit of Notification No. 175/86 in respect of the goods manufactured by them, namely, the brand name 'Bajaj' and on such clearances they paid full rate of duty. From paragraphs 1(a) and 1(b) of the Notification it is clear that for the purpose of computing the first clearances of specified goods only such clearances of specified goods which have been given the benefit of full exemption or concessional rate in terms of paras 1(a) and 1(b) of the notification. And in terms of para 7 of the Notification the goods which are manufactured in an SSI unit and affixed with brand name of another person who himself is not eligible to SSI exemption are chargeable to normal rate of duty, because such goods are not entitled for SSI exemption. In this view of the matter such goods are, therefore, to be treated as goods cleared not in terms of paras 1(a) and 1(b). The value of such goods, namely, the goods cleared with the brand name 'Bajaj' on payment of duty by the appellants need not be taken into consideration for the purpose of computing aggregate value of first clearances of Rs. 15 lakhs.

We find that as against this, Revenue has not been able to place before us any decision of either the Tribunal or any other higher judicial Court to the contrary. Therefore, as a co-ordinate bench we dutifully apply the ratio of the aforesaid case law and find that in view of the same having been followed by the first Appellate Authority, there is nothing in this Revenue appeal which compel us to interfere with the Order-in-Appeal impugned. Hence the Revenue appeal is rejected.