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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-2000

Reported in : (2000)(122)ELT167TriDel

Appellant : Executive Engineer, Capital

Respondent : Commr. of C. Ex.

Judgement :

1. The confirmation of duty demand in this case arises as a result of denial of the benefit of small-scale exemption under Notification No.175/86-C.E. dated 01.03.86 on the ground that the appellants were not registered as a small-scale unit with the Directorate of Industries, Chandigarh. It is the appellants contention that they were availing exemption in terms of para 4(b) of Notification No. 175/86 on various items of pre-cast cement classifiable under CET sub-heading 6807.00 which were captively used by them and also that the demand is barred by limitation since information about the manufacturing activities was submitted to the Department under cover of letter dated 10.08.88 and since they had disclosed all details, they could not be held to be guilty of suppression of facts.

2. On the other hand, it is the contention of the Revenue that the appellants have not substantiated their claim that they were availing exemption under para 4(b) of Notification No. 175/86 during the preceding financial years and hence the present demand covering the period from September, 1988 to March, 1993 is valid in law and that the extended period of limitation is available to the Department since the assessees never applied for or obtained Central Excise license, registration or

filed classification lists or price lists etc.

3. We have carefully considered the rival submissions. We find that the stand of the assessee that non-registration as SSI unit will not affect their eligibility to small-scale exemption since they were covered by the provisions of para 4(b) of Notification No. 175/86 which provides that registration requirement is not applicable to a manufacturer manufacturing specified goods in a factory (other than a factory registered under IDR Act, 1951) and availing exemption under Notification No. 175/86 or certain other specified notifications, has not been rebutted by the Revenue. The figures of clearance of excisable goods in the previous financial years (which are below Rs. 75 lakhs.) and figure of value investment of plant and machinery (below Rs. 20 lakhs) have not been disputed by the Revenue. Since the unrebutted position is that the appellants clearance during the preceding financial years was less than the ceiling limit prescribed and the investment in plant and machinery installed was also within the permissible limit, they were eligible to the benefit of exemption provided in Notification No. 77/83 and thereafter under Notification No. 77/85. Both these notifications are specified under para 4(b) of Notification No. 175/86. Therefore, the appellants are covered by para 4(b) and eligible to the benefit of small-scale exemption under Notification No. 175/86. On this basis, the duty demand gets reduced from Rs. 21,25,908.15 P to Rs. 1,92,075/-as claimed by the appellants.

However, even this duty liability does not survive in view of the fact that the demand is time-barred - the show cause notice dated 05.10.93 covers the period from September, 1988 to August, 1993 (demand is confined to the period September, 1988 to March, 1993) while the appellants made a complete disclosure of their manufacturing activities prior to September, 1988 namely on 10.08.88. Therefore, the finding of suppression of facts by the appellants is not sustainable.

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