Commissioner of C. Ex. Vs. Dcl Polyesters Ltd.

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SooperKanoon Citation : sooperkanoon.com/19230

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-2000

Reported in : (2000)(122)ELT911Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Dcl Polyesters Ltd.

Judgement :
1. These two appeals from the revenue have similar facts and are therefore taken up together. Shri B.K. Choubey, JDR appeared for the revenue and the respondents were represented by Shri V.S. Nankani, Advocate.

(1) Notification 85/95-C.E. dated 18.05.1995 exempts waste of man-made stable fibres and man-made filament yarn provided the assessees factory producing such fibres or yarn of organic polymers did not undertake the manufacturing process of polymerization or organic polymers. The respondents sought to avail of the benefit of the notification. They also produced a certificate from a technical institute to the effect that the assessee did not use the prohibited process. The Assistant Collector narrated the process. He examined the claim that the materials namely MEG and PTA were not organic polymers and therefore the prohibition did not apply. The Assistant Commissioner gave a much wider interpretation to the term "polymer" and included PTA and MEG in the extended definition in holding that the benefit of notification was not available. The assessees then filed an appeal. The Commissioner (Appeals) viewed that the attempt of the Assistant Commissioner in enlarging the scope of interpretation of the notification was not correct. He

accepted the claim that the process did not amount to prohibited process. On his allowing the appeal the revenue have filed the present appeal.

(2) The appeal memorandum makes the same statements as were made by the Assistant Commissioner in his findings. It speaks of the primary objective of the notification and discusses the intention behind the issue of the notification. Shri Choubey amplifies the arguments made therein. Shri Nankani cites the judgment reproduced in - 2000 (39) RLT 667 (CCE, Chandigarh v. Indian Acrylic Ltd.) in which this very notification was examined. The Tribunal held that the notification has to be strictly construed and that there was no scope for intentment in a taxing statute.

(3) On examination of the facts we find that the cited judgment of the Tribunal would cover the case before us fully. We also observe that where an independent opinion of a chemical expert had certified that the processes undertaken by the assessees were within the permissible parameters, the warranted thing for the department was to secure another independent opinion or atleast to invite their own chemical examiners etc. to verify whether the claim made by the assessees was chemically correct or not. Instead of doing the same, the Assistant Commissioner took upon himself to enlarge the scope of interpretation of the notification.

(4) Here we take into account another submission of Shri Choubey and that is met the cited judgment in the case of Indian Acrylic Ltd. should not be taken to be the final authority. The department still has the right to appeal. We find little merit in this submission. We therefore uphold the impugned order and dismiss this appeal.

(1) The facts are identical. The orders of the Assistant Commissioner are identical. The orders of the Commissioner in this case referred to and relied upon earlier order discussed above in the DCL Polyesters Ltd. case. The same arguments were advanced by both sides. The only distinction is that the notification on which the contest is made is 8/96 dated 23.07.1996 but where the prohibition condition, however, is the same. We therefore uphold the impugned order and dismiss this appeal.