

Commissioner of Central Excise Vs. Power Pack

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-17-2000

Reported in : (2001)(73)ECC540

Judge : S T Gowri, J S Murthy

Appellant : Commissioner of Central Excise

Respondent : Power Pack

Judgement :

1. The appellant is engaged in the manufacture of excisable goods falling under 73,84 and 85 of Central Excise tariff. The appellant availed at the relevant time the exemption Notification 175/86. Two notices were issued in September and October 1992 demanding duty on the goods cleared by the appellant in July and September, 1992. The charges in the notices were this. Under the notification, where a manufacture manufactures goods classifiable in two separate chapters of the tariff, as is the case with the appellant, exemption is only availed to goods falling within one chapter of clearances up Rs. 20 lakhs, within the first clearance of Rs. 30 lakhs. It was alleged that this condition had not been followed.

2. The Assistant Collector adjudicating on the notice, held that the duty had been rightly demanded on clearances exceeding an aggregate value of Rs. 30 lakhs including in that Rs. 20 lakhs exemption for one clearance of goods falling in one chapter including those cleared on payment of duty. He held that demand was correctly made and confirmed it. The assessee appealed this order. The Collector

(Appeals) found that the issue was covered by the decisions of this tribunal in EL. P.EM. Industry v. CCE and Swaraj Paints Industries v.CCE , accepted the assessee's appeal and set aside the Assistant Collector's order. Hence this appeal by the department.

3. The appeal cites the decisions of the Tribunal, holding views contrary to the above decisions such as CCE v. India Potteries Limited and Ors. The contradictory stand taken by the Tribunal in these two series of decisions was referred to the Larger Bench. In its decision in Ramakrishna Engineering Works v. CCE , the bench placed emphasis on the words 'first clearances' occurring in last line of paragraph 1 of the notification and referred to the judgment of Madhya Pradesh High Court in B.K.Rubber Industries Put. Ltd. v. Union of India interpreting this word 'first' to mean clearances in chronological order. Applying this as meaning in determining the clearances of goods in more than one chapter within the first clearance of Rs. 30 lakhs it said that the exemption is available only up to Rs. 15 lakhs (that was the limit in the notification at the relevant time) be within the total ceiling of Rs. 30 lakhs. This decision therefore supports the ground in the department's appeal.

4. Normally that would settle the matter. However, that is one more element. The appeal against Khalsa Paper Industries v. CCE (unreported) which had followed the earlier decision in EL. P. EM. Industry v. CCE was dismissed by Supreme Court. The bench of the Tribunal therefore held in CCE v. Fibrotex Bombay (Pvt.) Ltd. that the decision of the Larger Bench is therefore no longer good law.

5. A copy of the Supreme Court's order and judgment dismissing the appeal is not available to us. However, the dismissal is . That report indicates that the Supreme has dismissed the appeal filed by the Collector against Tribunal's order. It thus appears that the Supreme Court has dismissed the matter in limine or at the admission stage.Sun Exports Corporation v. CC, Bombay Revenue that merely because the Supreme Court rejected in limine at the admission stage an order of the Tribunal the ratio of the Tribunal decision would act as binding precedent. It said, "No doubt it is contended on behalf of the Revenue that the contrary view taken by the Tribunal has been challenged in this Court which is rejected. We do

not think that dismissal at the admission stage can be relied upon as a binding precedent." It would therefore follow that by the dismissal of the appeal against that order the Supreme Court has confirmed the law laid down by the Tribunal in Khalsa Paper Industries v. CCE, as a binding precedent. Hence it is the ratio of the Larger Bench that is to apply. This argument has obviously been not raised before the bench of the Tribunal, which decided CCE v. Fibrotex Bombay (Pvt.) Ltd. on the view that Larger Bench decision is no longer good law. With respect therefore we are unable to follow that decision and prefer to follow the decision of the Larger Bench. The result of that would be that the clearances made by the respondent had been regulated on the basis of the first clearances. The department's appeal succeeds.

7. Appeal is accordingly allowed, Commissioner (Appeals) order set aside and Assistant Collector's order restored.

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