

Light Publications Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-21-2000

Reported in : (2001)(74)ECC620

Judge : S Kang, S T S.S.

Appellant : Light Publications Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant filed this appeal against the order-in-original dated 22.3.93 passed by the Collector, Central Excise.

In the impugned order the duty amounting to Rs. 5,99,423.23 was confirmed and a penalty of Rs. 5 lakhs was also imposed. The Collector of Central Excise also ordered for confiscation of Land, Plant & Machinery and permitted the same on payment of redemption fine of Rs. 2 lakhs.

2. Brief facts of the case are that appellants are engaged in the manufacture of Printed Cartons and Printed Catch Covers and they were availing the benefit of exemption under Notification No. 175/86-CE dated 1.3.1986 which was amended by Notification No. 244/87-CE dated 30.10.87 to the effect that the benefit of the notification is not admissible to the units registered with Director General of Technical Development Units (DGTD) as per Para-4(b) of Notification No.175/86-CE. The appellants applied for registration as DGTD Unit and the same was

granted on 26.7.88. The Unit of the appellant was visited by the Revenue Officers on 20.10.89 and during the verification of the record, it was noticed that appellant during the period 30.10.87 to 25.7.88 availed the benefit of Notification No. 175/86--CE dated 1.3.86 wrongly by suppressing the facts that their Unit was registered with DGTD. A show cause notice was issued and the adjudicating order was passed.

3. Learned Counsel appearing on behalf of the appellant submits that for the period 26.7.1988 to 21.8.89 a show cause notice was issued on 24.8.89 for denial of the benefit of Notification No. 175/86-CE dated 1.3.1986 and in pursuance to that notice the appellant paid the duty in September 1989. His submission is that as the Revenue was aware of the facts in the year 1989, therefore, the present show cause notice dated 2.4.91 cannot be issued on the ground of suppression or mis-declaration.

4. On merit, he submits that the appellants availed the benefit of Small Scale Exemption for the year 1986-87 which is not disputed by the Revenue. Therefore, the appellants are entitled for the exemption for the year 1988 to 1989. His submission is that the appellants were registered with DGTD on 26.7.88, therefore, benefit of notification can be denied only on 26.7.88 and not from 30.10.87. He, therefore, submits that the appeal be allowed.

5. Learned Departmental Representative appearing on behalf of the Revenue submits that appellant filed a classification list claiming the benefit of Notification No. 175/86-CE dated 1.3.86 and in the classification list, they have nowhere mentioned that they have registered with the DGTD. Therefore, the appellant availed the benefit of Notification by suppressing the facts by making a wilful misstatement. In respect of earlier demand, learned DR submits that the Supdt. of Central Excise written a letter to the appellant for demand of duty and in compliance to that letter, the appellant deposited the duty. In the present case, only when officers of the Central Excise visited the factory of appellant on 20.10.89, it has come to notice that appellant also wrongly availed the benefit of Small Scale Exemption Notification during the period 30.10.87 to 25.7.88. In respect of eligibility under the notification before the registration with the DGTD, he

submits that appellant had not produced any evidence to show that they are eligible for the benefit of this notification. He relies upon the decision of the Hon'ble Supreme Court in the case of Novopan India Ltd. v. Collector of Central Excise and Customs, Hyderabad, and assessee to establish that they fulfil the conditions of the notification. His submission is that the adjudicating authority in the impugned order gave a specific finding of fact that the appellant had not produced any evidence to show that they are entitled for the exemption notification prior to 25.7.88. He, therefore, submits that the appeal be dismissed.

7. In this case the benefit of Notification No. 175/86-CE dated 1.3.86 was denied to the appellant for the period 30.10.87 to 25.7.88 on the ground that appellants were not eligible for the exemption in view of the amendment made by Notification No. 224/87-CE in Para-4(b) of the Notification No. 175/86-CE dated 1.3.86. By this amendment, the Units registered with DGTD were not entitled for the benefit of this notification. The appellant applied for registration of their Unit as DGTD Unit by DGTD on 20.7.87 and their Unit was registered on 26.7.88.

On visit of the factory by Excise officers on 20.10.89, it was found that the appellants wrongly availed the benefit of Notification No.175/86-CE dated 1 3.86. The appellant filed a classification list claiming the benefit of notification and appellant had not disclosed the fact regarding registration of their Unit with the DGTD, therefore, by this misdeclaration and suppression regarding registration with the DGTD, the appellant wrongly availed the benefit of notification. The contention of the appellant is that they were eligible for exemption under Notification No. 175/86-CE dated 1.3.86 prior to the registration of the Unit with the DGTD has no force as the adjudication authority in the impugned order held that the appellant had not adduced any evidence that for the period 30.10.87 to 25.7.88, they have fulfilled the conditions of the notification and they were registered with the Small Scale Industries, the competent authority under the provisions of Industries (Development and Regulations) Act, 1951. Hon'ble Supreme Court in the case of Novopan India Ltd. v. Collector of Central Excise and Customs, Hyderabad, exemption being in the nature of exception to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the state

and a person invoking an exemption or exception must establish clearly that he covers by the said provisions.

8. It has also come on record by way of statement of Smt. Usha Naveen Bhagat that authorised signatories of the Company that during the year 1986-87, the value of their Plant and Machinery installed in their factory were more than Rs. 25 lakhs, therefore, the Unit is not the SSI Unit in terms of provisions of Industries (Development and Regulations) Act, 1951 as the investment on Plant and Machinery exceed the limit fixed for SSI Unit. In view of the above discussion, we find no infirmity in the impugned order in respect of denial of the benefit of notification during the period in dispute. However, taking into facts and circumstances of the case, confiscation of Land, Building plant and Machinery of the appellant is set aside and the penalty imposed under Rule 173Q(1) of the Central Excise Rules is reduced from Rs. 5 lakhs to Rs. 1 lakh. The appeal is disposed of in the above terms.

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