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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-04-1985

Reported in : (1985)(5)LC1966Tri(Delhi)

Appellant : Vidharbha Ceramics Pvt. Ltd.

Respondent : Collector of Central Excise

Judgement :

1.In respect of goods falling under Tariff Item 68-C.E.T. manufactured by the appellants, M/s. Vidharbha Ceramics Pvt. Ltd. they were availing of the exemption under Notification No. 89/79-C.E., dated 1-3-1979. But notice dated 14-7-1980 was received by them that they were not entitled to benefit under the said notification and action was, therefore, proposed to be taken in that regard. They sent reply claiming benefit of the notification. On adjudication the Collector, Central Excise, Nagpur passed the order dated 7-10-1980 holding that they were not entitled to benefit under the said notification. The said order was confirmed on appeal to the Central Board of Excise and Customs under order dated 13-3-1981. The Revision Petition against the same to the government has been received on transfer and is being disposed of as an appeal before this Tribunal.

2. We have heard Shri C.L. Beri, Advocate, for the appellants and Shri K.D. Tayal, Senior Departmental Representative, for the respondent.

3. The only point for determination is whether the value of that part of the machinery which had been dismantled and removed permanently by the

appellants, was also to be included in arriving at the total value of the capital investment on plant and machinery for purpose of applying Notification No. 89/79-C.E. The contention for the appellants is that when such part or portion of the plant or machinery had been dismantled and permanently removed, the value thereof should be excluded. But the department contends to the contrary and the said contention had been accepted by the Collector and by the Board.

4. The relevant portion in the Notification No. 89/79 is the proviso which reads as follows : "Provided that an officer not below the rank of an Assistant Collector of Central Excise is satisfied that the sum total of the value of the capital investment from time to time on plant and machinery installed in the industrial unit in which the said goods, under clearance, are manufactured, is not more than rupees ten lakhs." 5. Shri Beri for the appellants points out that when this notification was subsequently superseded and replaced by Notification No.105/80-C.E.-dated 19-6-1980 the terms were similar to the terms of Notification No. 89/79-C.E. including the proviso but that in Explanation I the following was inserted in order to make the meaning clear. The said Explanation I reads as follows : "While determining the sum total of the value of the capital investment, only the face value of the investment at the time when such investment was made shall be taken into account, but the value of the investment made on plant and machinery which have been removed permanently from the industrial unit or rendered unfit for any use shall be excluded from such determination." The contention of Shri Beri is that this explanation is merely clarificatory in nature and would show that even under the earlier notification the calculation of the value of the capital investment will have to be worked out in the manner provided under this explanation though Explanation I to the earlier Notification No.89/79-CE had not contained such a provision. On the other hand, Shri Tayal supports the reasoning in the order of the lower authorities which was to the effect that the explanation to Notification No. 105/80 would be effective only with reference to the period for which Notification No. 105/80 was effective and not to earlier periods.

6. We have carefully considered the submissions of both sides. The purpose of these notifications is to give relief to small-scale industries taking into consideration the sum total of the value of the capital investment as also the total

of their clearances during particular periods. The proviso to the earlier notification has been already extracted. It reads that the sum total of the value of the capital investment from time to time on plant and machinery should not exceed Rs. 10 lakhs. Under Explanation I thereto it had been mentioned that only the face value of the investment at the time when such investment was made should be taken into account, evidently to rule out any contention that the depreciated value should be taken into account.

But that would not, in our opinion, justify the interpretation that even the value of such part of the machinery as had been dismantled and permanently removed should also be taken into consideration though, at the relevant time, they did not form part of the capital investment. In the present instance, it appears that some part of the capital investment was dismantled and removed and had been replaced by new machinery. It would not be proper to include, the value of dismantled machinery as well as the new machinery in arriving at the total value of the capital investment. The view to the contrary of the lower authorities does not appear to be correct. It was evidently to make this position clear that the Explanation to Notification No. 105/80 had been formulated in the manner extracted earlier.

7. We, therefore, hold that for purpose of Notification No. 89/79-CE the value of any machinery which had been dismantled and was not part of the plant at the material time should be excluded. We further hold that if by such explanation the appellants are entitled to benefit of Notification No. 89/79-CE they shall be given consequential benefit.

The appeal is allowed in the above terms.