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Advance Multitech Ltd. Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2001

Reported in : (2002)(149)ELT325Tri(Mum.)bai

Appellant : Advance Multitech Ltd.

Respondent : Commissioner of Customs and

Judgement :

2. In the order impugned in this appeal, the Commissioner (Appeals) has held that the appellant was not entitled during the year 1992-93 and 1993-94 for the exemption contained in notification 175/86.

3. The reason that the Commissioner advanced in support of his conclusion is that the investment made by the appellant in its plant and machinery resulted in the value of such plant and machinery exceeding Rs. 60 lakhs. This, the Commissioner says, disentitled the appellant to be considered as a small scale industrial undertaking to which the benefit of notification was available.

4. The notification itself does not require fulfilment of any condition relating to the value of plant and machinery installed in the manufacturer's factory. It provides that the exemption shall be applicable to a factory which is an undertaking registered with the Directorate of Industries in any State or the Development Commissioner (Small Industries) as a small scale industry under the provisions of the Industries (Development and Regulation) Act, 1951. It is not in dispute that the appellant, at the relevant time, was registered with the Directorate of Industries in

Gujarat that registration has not been withdrawn or cancelled. The Commissioner (Appeals) refers to a letter dated 7.7.1999 issued by the Joint Commissioner of Industries, from which he concludes that the appellant was no longer entitled to be considered as a small scale undertaking. However, he does not narrate the contents of the letter. If, as he claimed, this letter indicated that the appellant was not entitled to be considered as small scale industrial undertaking, we would expect that action had been initiated by the appropriate authorities to cancel the registration which is accorded to it as such an industry. The representative of the appellant states that the registration has so far not been withdrawn. If that is the case, the basis for the Commissioner's denial of the exemption has no validity.

5. This appeal is accordingly allowed and the impugned order set aside.

We however clarify that if the concerned authorities have initiated action to cancel the registration on the ground that the investment in plant and machinery exceeding the specified limit (on which the present applicant has no information), and such action results in cancellation of the registration, the authorities may proceed to act upon that with regard to the availability of the exemption contained in the notification, in accordance with law.

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