Commissioner of Central Excise, Vs. Comed Chemicals P. Ltd.

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SooperKanoon Citation : sooperkanoon.com/26022

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-01-2001

Reported in : (2002)(141)ELT369Tri(Mum.)bai

Appellant : Commissioner of Central Excise,

Respondent : Comed Chemicals P. Ltd.

Judgement :

1. Notice issued to Comed Chemicals P. Ltd., the respondent to this appeal, contained an allegation that it was not entitled to the benefit of exemption contained in notification 175/86. The reason that was advanced in support was that the factory in which it manufactured the goods had been utilised earlier in the financial year by Panacea Pharma P. Ltd. for manufacture of goods cleared either entirely without payment of duty or partially exempted duty in terms of that notification. The aggregate value of the goods cleared by Panacea Pharma P. Ltd. and the goods cleared by Comed Chemicals P. Ltd. had already exceeded the limit of Rs. 75 lakhs contained in the proviso to paragraph 2 of that notification. Adjudicating upon this notice, the Collector has held that since Panacea Pharma P. Ltd. and the respondent before us who is separate assessee, the clearances earlier made by Panacea Pharma P. Ltd. from the factory could not amount to the clearances of this assessee. He had thus dropped the proposal for demand of duty. Hence this appeal by the Commissioner.

2. We have heard the departmental representative. The respondent is absent and unrepresented despite notice. Paragraph 2 of the notification 175/86 provides "The

aggregate value of clearances of the specified goods from any factory by one or more manufacturers in any financial year under Clause (a) and (b) of paragraph 1, shall not exceed rupees thirty lakhs and sixty lakhs respectively." The proviso under this paragraph prescribes that the value of clearances by one or more manufacturers, taken together, shall not exceed Rs. 75 lakhs. The term "factory" is not defined in the notification. By applying the common or ordinary meaning of a place of manufacture, it would cover the premises where the goods were manufactured both by Comed Chemicals P. Ltd. and Panacea Pharma P. Ltd. Therefore, the clearances of goods from this factory during the financial year by both these manufacturers should not exceed Rs. 75 lakhs for the purpose of computing the exemption contained in Clause (a) and (b) of paragraph 1. Clearances in excess of this amount will not be entitled to the notification.

3. On merits, therefore, the Collector's conclusion cannot be upheld.However, one of the contentions raised before him was of limitation.

Since he has accepted the manufacturer's claim on merits, he has not gone into this aspect. Although the appeal contains grounds with regard to limitation, it is appropriate, in our view for the Commissioner now to consider this aspect.

4. Therefore, while we allow the appeal and set aside that portion of that order of the Collector dropping demand for duty on this ground, we remand the matter to the Commissioner for disposing of the manufacturer's claim on limitation, in accordance with law.