Datt Multinationals Ltd. Vs. Commissioner of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-2002

Reported in : (2002)(144)ELT566TriDel

Judge : B T K.K.

Appellant : Datt Multinationals Ltd.

Respondent : Commissioner of C. Excise

Judgement :

1. The appellant manufactures non-alloy steel ingots/billets which are chargeable to duty on compounded rates under Section 3A of the Central Excise Act, 1944. They applied for abatement from payment of duty for the period from 13-11-97 to 20-11-97 on account of closure of their unit in terms of the provisions of Rule 96ZO(2) of the Central Excise Rules, 1944. They again applied for the abatement of duty on the same grounds for the period from 4-12-97 to 13-12-97. The Commissioner of Central Excise Chandigarh-I vide his order dated 22-11-2000 however, rejected their request for abatement for both the aforesaid periods.

2. This appeal is against the impugned order of the Commissioner. I have heard Shri Gagan Kohli, Advocate for the appellants and Smt. K.A.Mishra, SDR for the respondents. In respect of first period, the Commissioner in his order has observed that the party had not filed 'continuous closure' declaration as provided under Rule 96ZO(2)(e). It is observed that the continuous closure declaration as prescribed under this rule is absolutely essential and mandatory to avail of the

benefit of abatement of duty and on non-fulfilment of this statutory condition, the abatement cannot be allowed. The learned Counsel for the appellants has drawn attention to the letter dated 13-11-97 addressed by the party to the Assistant Commissioner of Central Excise, Patiala in which they had informed that their furnace is closed on 13-11-97 due to damage. In the same letter, the particulars relating to stock of raw material, finished goods and reading of electricity meter are also intimated. The appellants again wrote a letter dated 20-11-97 to the Assistant Commissioner, Patiala in which it is stated that they had started production in their unit with effect from 20-11-97. In this letter they mentioned the similar particulars as obtaining on the date of re-start of the production. These documents are not in dispute. It is not the case of department that the unit of appellants had not remained continuously closed during this period. I am of the view that information contained in these two letters of the party sufficiently fulfil the requirement of the mandatory provisions under Rule 96ZO(2)(e). The appellants are therefore entitled to the abatement for the period from 13-11-97 to 20-11-97. With regard to the second period of closure from 4-12-97 to 13-12-97, it is observed in the order of Commissioner that the party did not send the intimation for re-start of the unit on 13-12-97; that the intimation was sent to the jurisdictional Superintendent of Central Excise on 15-12-97 by hand and the intimation to the jurisdictional Assistant Commissioner/Deputy Commissioner is given on 15-12-97 through courier service. It is observed that in terms of provisions of Rule 96ZO(2)(C), the manufacturer is required to inform in writing about the start of production again to the Assistant Commissioner with a copy to the Superintendent either prior to the date of start of production or on the date of start of production. It is observed that since the intimation in this case for re-start on 13-12-97 is given to the Superintendent and the Assistant Commissioner only on 15-12-97 the abatement cannot be allowed. The learned Counsel for the appellants submits that the intimation for re-start was sent to the Assistant Commissioner on 13-12-97 itself by courier. The 13-12-97 and 14-12-97 being closed days on account of Saturday and Sunday respectively, the intimation letter was delivered to the Assistant Commissioner only on 15-12-97. The same is the reason that the letter of re-start could be given to the jurisdictional Superintendent only on 15-12-97. The learned Counsel relies on the provisions of Section 10(1) of the General Clause Act, 1897 wherein it is provided that where, by any Central Act or Regulation, any act or proceedings is directed or allowed to be done or taken in any Court or office on a certain day, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open. It is, therefore, pleaded that the intimation given on 15-12-97 is not late as per these provisions. On careful considerations of these submissions, it is observed that the two days as referred to above, being closed days, the intimation given to the concerned authorities on 15-12-97 is within the provisions of Rule 96ZO(2)(e). In the light of the aforecited provisions of the General Clause Act, the abatement for this period is also therefore, admissible to the appellants.

3. In the result the impugned order passed by the Commissioner is set aside and the appeal is allowed.