

Treasure Tech Electronics Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-15-2002

Reported in : (2002)(140)ELT398TriDel

Judge : S Kang, a T V.K.

Appellant : Treasure Tech Electronics Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. Appellants filed this appeal against the adjudication order passed by the Commissioner of Central Excise.

3. Appellants were manufacturing printed circuit boards (PCB) falling under sub-heading 8534.00 of Central Excise Tariff and were working as 100% EOU. They were permitted to manufacture the goods under bond and were also permitted to make advance DTA sales up to Rs. 50 lakh from August 1998. For the period from August, 1998 to November, 1999, appellants cleared the goods in DTA and availed the benefit of Notification No. 2/95-C.E., dated 4-1-1995. During scrutiny of their records, it was found that the appellants cleared the goods in DTA in excess to Rs. 50 lakh. A show cause notice was issued to the appellants for demanding duty for the period from August, 1998 to November, 1999 on the ground that they were not entitled for the benefit of Notification No. 2/95-C.E., dated 4-1-1995 as the appellants sold the goods in DTA for which they were not allowed to be sold in India. The Adjudicating authority confirmed the demand and imposed penalty.

4. The contention of the appellants is that they were not entitled for the benefit of Notification No. 2/95-C.E. in respect of the goods sold in DTA without permission. His submission is that by availing the benefit of Notification No. 2/95-C.E., dated 4-1-1995, they had already paid central excise duty equivalent to 50% of the duties of customs leviable on the goods if imported into India in terms of Notification No. 2/95-C.E. Ld. Counsel relied upon the decision of the Hon'ble Supreme Court in the case of SIV Industries Ltd. v. C.C.E. & C. reported in 2000 (117) E.L.T. 281 (S.C.) to submit that the appellants are only liable for central excise duty as per the provisions of Section 3(1) of the Central Excise Act. He also relies upon the circular dated 13-2-2002 issued by the Ministry of Finance wherein it is made clear that in case 100% EOU clears the goods in DTA without necessary permission, they are liable to pay excise duty under Section 3(1) of the Central Excise Act. His contention is that they had already paid 50% of the customs duty, which is higher than the central excise duty, therefore, the demand is not sustainable.

5. The contention of the revenue is that the appellants are not entitled for the benefit of Notification No. 2/95-C.E. and according to Section 3 of Central Excise Act, the goods manufactured by 100% EOUs, are liable to duty equal to the duties of customs under the Customs Tariff.

6. In this case, the appellants cleared the goods in DTA and availed the benefit of Notification 2/95-C.E. Appellants stated that they are not entitled for the benefit of Notification No. 2/95-C.E. The only issue remains whether the appellants are liable to pay excise duty under excise tariff or an amount equal to the customs duty. The Ministry of Finance, vide circular No. 618/9/02-CX, dt. 30-12-2002, in view of the decision of the Hon'ble Supreme Court in the case of SIV Industries Ltd. (supra), clarified that prior to 11-5-2001, the clearance from EOU, if not allowed to be sold in India, shall continue to be chargeable to duty under main Section 3(1) of the Central Excise Act. For ready reference, the Ministry of Finance circular is reproduced below : "It is directed to invite reference to Supreme Court's judgment in case of SIV Industries v. CCE [2000 (117) E.L.T. 281 (S.C)] vide which the Apex Court had held that "Proviso to Section 3(1) regarding the duty chargeable on goods cleared by EOUs shall be applicable only to sales made in DTA up to 25% of production which are allowed to be sold into India as per provision of EXIM

Policy." In other words, Hon'ble Court decided that if the goods are "not allowed" to be sold in India, the proviso to Section 3(1) of Central Excise Act, 1944 shall not be applicable. The expression 'allowed to be sold' has since been replaced with 'brought to any other place' w.e.f. 11-5-2001 vide Section 120 of Finance Act, 2001 (14 of 2001).

It has come to the notice of the Board that field formations are interpreting the judgment of Apex Court to the effect that if the goods cleared by EOUs are not allowed to be sold into India, the Section 3(1) of Central Excise Act, 1944 is not applicable and duty can be demanded under the provisions of Customs Act, 1962 only.

Board has taken a serious view of this misinterpretation. The provisions of Central Excise Act, 1944 shall apply to all goods manufactured or produced in India for which Section 3 is the charging section. EOUs are also situated in India and the chargeability under Central Excise Act is never in doubt. Therefore, it is clarified that prior to 11-5-2001, the clearances from EOUs if not allowed to be sold in India, shall continue to be chargeable to duty under main Section 3(1) of Central Excise Act, 1944.

Appropriate action may be taken immediately to safeguard revenue and all pending decisions may be settled accordingly." 7. In view of above circular, the appellants are only liable to pay central excise duty as per Central Excise Tariff. The impugned order, demanding duty equal to the customs duty, is not sustainable, hence is set aside. Consequently, penalty is also set aside. The appeal is allowed.

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