

Pam Instruments Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-31-2002

Reported in : (2002)(83)ECC722

Judge : S T G.R., P Bajaj

Appellant : Pam Instruments Pvt. Ltd.

Respondent : Cce

Judgement :

Therefore, I find that the contention of appellants in the matter does not have any force in it and the 'Electric Control Panel' cleared by them after affixing sticker of 'Carrier' logo would be treated as 'Branded Goods' not eligible for SSI exemption in terms of para 4 of the Notification No. 9/99-CE dated 28.2.99. As regards the case law of 'Two Star v. A.C. Central Excise 1981 ELT 865 (Bom.)' cited by the appellants, which held 'that a manufacturer will not be disentitled to the benefits of an exemption notification merely because the goods are manufactured by him under the customer's brand name provided he satisfies all the conditions of the notification'.

I find, the above case law cited by the appellants is for a very old period when there were no specific conditions and Explanations laid down for clearance of 'Branded Goods' in the relevant SSI exemption Notification.

2. The facts of the case in brief are that appellants are manufacturing and clearing Electric Control Panels after classifying them under sub-heading No. 8537.00 of the Central Excise Tariff Act, 1985. They are also availing modvat credit and SSI exemption under Notification No. 9/99-CE dated 28.2.99, in terms of para 4 of the Notification.

Since the appellants were not following Chapter X Procedure for availment of exemption under that Notification, Learned Commissioner (Appeals) has held as indicated above.

3. Arguing the case for the appellant(s) Shri MM. Mehra, Director of the appellant company submits that Control Panel is an essential component of air-conditioning machine. He submits that their case is fully covered by Sub-clause (a) & (b) of Clause 4 of Notification No.9/99-CE, which inter alia, provided that "Exemption will be available to a manufacturer who uses the brand name/logo of the main supplier and supplies goods to the manufacturer of the original machinery as equipment." Learned Representative submits that they were supplying their goods only to M/s Carrier Aircon Ltd. who are the manufacturer of air-conditioning machinery. It was, therefore, contended by him that they were entitled to exemption as SSI unit in terms of Notification No. 9/99-CE. It was also contended by him that Central Board of Excise & Customs by its Circular No. 71/71/94-CE dated 27.10.94 clarified that inputs bearing a brand name of user manufacturing their machinery only to suit the manufacturing needs of the customer, the benefit of SSI exemption should not be denied so long as they are made to order as per the design and specification of a particular manufacturer and sold to that manufacturer for his own use." In support of his contention he cited and relied upon the decisions in the following cases:Tracko International v. CCE Learned Representative, therefore, prays that the appeal may be allowed.

4. Shri MP. Singh, learned DR submits that concession under Clause 4 of Notification No. 9/99-CE is available only if the user of the concession follows Chapter X procedure. He submits that in the instant case Chapter X procedure was not followed by the appellant. He submits that it was not only a procedural requirement but was an essential condition for availing the benefit of Clause 4 of

Notification No.9/99-CE. He submits that the Tribunal has now been holding that requirement of rule and law are to be strictly followed. He submits further that Apex Court in the case of CCE, Ahmedabad v. Cadila Laboratories (P) Ltd. 5. It is evident that a pre-condition to the entitlement of exemption is the following of the procedure under Rule 56A, Rule 56A(1) provides that the Central Government may by notification in Official Gazette specify the excisable goods in respect of which procedure laid down in Sub-rule (2) shall apply. The procedure which is provided by Sub-rule (2) contemplates an application being made to the Collector for permission to manufacture excisable goods specified in Sub-rule (1) and to receive material or component parts and use the same in the manufacture. It is not in dispute that no application was made to the Collector as provided by Rule 56A. Even if, there was a right with the respondent to get exemption for the amount of customs duty paid under Section 3 of the Customs Tariff Act, 1975, the law enjoined that the procedure stipulated in Rule 56A had to be followed. Learned Counsel for the respondent has not been able to bring to our notice any material to show that this procedure was followed. The Tribunal was, therefore, wrong in allowing the appeal of the respondent and directing that the benefit of the said notification be given to it.

6. For the aforesaid reasons, this appeal is allowed and the impugned order of the Tribunal is set aside. No costs.

Learned DR, therefore, submits that the appellant was not entitled to exemption under Notification No. 9/99-CE. He, therefore, prays that appeal may be rejected.

5. We have heard the rival submissions. We have also perused the case-law cited by the learned representative of the company as also the learned DR. We also note that in terms of Clause 4 of Notification No.9/99-CE Procedure under Chapter X was to be followed. The admitted position was that Chapter X Procedure was not followed in the instant case. We have seen the ruling of the Apex Court in the case of CCE, Ahmedabad v. Cadila Laboratories (P) Ltd. cited above. We note that even though the benefit of exemption under Notification No. 9/99-CE in terms of Clause 4 accrues to the assessee the law enjoins that procedure stipulated in Chapter X had to be followed. Since the procedure was not followed by the

appellant the benefit of Notification No. 9/99 was not available to the assessee. Having regard to the ruling of the Apex Court in the case of Cadila Laboratories (P) Ltd. cited above we hold that benefit under Notification No. 9/99 has rightly been denied.

6. Since it is a question of nominal lapse on the part of the appellant, we set aside the order imposing penalty. In this view of the matter the penalty is set aside but the appeal is rejected in the above terms.

7. However, the appellants shall have liberty to obtain a certificate from the authorities in token of having paid duty on the input and the input user shall have the liberty to vary credit of duty Rule 57E of Central Excise Rules, 1944.

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