Maharashtra Plastic Indus. and Vs. Cce

Maharashtra Plastic Indus. and Vs. Cce

SooperKanoon Citation : sooperkanoon.com/29463

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-26-2002

Reported in : (2003)(106)LC657Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Maharashtra Plastic Indus. and

Respondent : Cce

Judgement :

1. These two appeals are against order-in-original dated 12.8.1997 passed by the Commissioner, Central Excise, Mumbai-IV who has: (iv) Imposed penalty of Rs. 6,00,000/- under Rule 9(2) on M/s. M.P. Industries (v) Confiscated land, building, plant etc. under Rule 173Q(2) but allowed redemption on fine of Rs. 10,000/-, and 2. In this ease, the main issue relates to admissibility of exemption under Notification No. 1/93-CE dated 28.2.1993. This Notification grants exemption to small scale units subject to fulfilling certain conditions. Paragraph 4 of the Notification bars exemption to goods bearing a brand name or trade name of another person. Therefore, if a small scale unit produces goods bearing brands of others, it has to pay duty on the same. While such a restriction is understandable, Explanation III to the Notification introduces a totally different dimension. The exemption is available to units not exceeding certain clearance limit. Explanation III specifically excludes from such limit clearances of branded goods on payment of duty under paragraph 4. Such a provision is an open invitation to larger units to exclude clearances of goods bearing brands of others and enjoy small scale

exemption on unbranded goods and goods of their own brand. That is precisely what M/s. M.P. Industries have done. The attempt by the filed officials to deny them the exemption can at best be described as over enthusiasm on the lace of Explanation III precisely enlarging the scope of small scale exemption to larger units by specifically excluding value of goods bearing brand of others.

3. Much has been sought to be made by the adjudicating Commissioner of the fact that the goods bore a sticker on the top portion and not on the individual profiles/strips. The learned advocate for the appellants has brought to our notice Tribunal's decision in Nirlex Spares Pvt.

Ltd. v. CCE, Rajkot wherein it has been held that as the goods were sold in corrugated boxes bearing the hexagonal design, it cannot be said that the goods are not affixed with the brand name merely because the said design does not appear on the goods itself.

4. As such, we are of the opinion that the appellants are entitled to the exemption under Notification No. 1/93 in view of Explanation III excluding clearances of branded goods under paragraph 4. The appellants have also raised many other issues such as time bar, adjudication order travelling beyond the show cause notice and the adjudicating Commissioner ignoring the case laws cited before her. We do not deem it necessary to deal with these issues separately as we have decided in favour of the appellants on merits.

5. The appeal is allowed and the impugned order is set aside with consequential relief to the appellants.