Micro Engineers Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-24-2003

Reported in : (2003)(155)ELT84Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Micro Engineers

Respondent : Commissioner of Customs

Judgement :

2. The appellant reimported a rotary die cutting machine which it had manufactured and exported. While reimporting the machine, it claimed, and was granted, the benefit of the exemption from duty contained in entry 1 of the table to Notification 158/95. This entry grants exemption to reimported goods subject to various conditions, one of them being that the goods must be re-exported within six months from the date of importation or such extended period not exceeding six months, as may be granted by the Commissioner. The appellant did not comply with this contention. While the machine was reimported on 29-8-2000 which was re-exported on 26-7-2002. Notice was therefore issued demanding duty on the machine by denying the exemption and imposing penalty. Adjudicating on the notice, the Commissioner has confirmed the demand for duty of Rs. 4.18 lakhs approximately and imposed penalty under Section 112 of the Act of Rs. 2 lakhs. Hence this appeal.

3. The appeal itself is limited to penalty imposed on the appellant and liability to duty is not disputed. It is contended by the Counsel for the appellant that there was no deliberate intent to take wrongful advantage of the notification. The failure to export the machine in time was because the appellant failed to find a buyer for the repaired machine. The machine was initially exported on sale to a buyer in Saudi Arabia who returned it for the purpose of repairs. Subsequently, he refused to take back the repaired machine. The appellant therefore had no alternative but to wait till another buyer was found.

4. We are not able to accept this contention. No evidence is produced in respect of the claim that the buyer in Saudi Arabia sent the machine back for repair. If that were the case, and the buyer thereafter refused to take the machine back, it would mean that he has forfeited the amount that he paid to the appellant for the purchase, or in the alternative that the appellant supplied the machine without waiting for payment. We do not find it possible to accept either of these alternatives in the absence of any evidence. While Counsel for the appellant prays time to produce evidence, we note that this is the fourth time the matter has come up having been adjourned on the first two occasions on the request of the appellant and do not think any purpose would be served by adjourning the matter once again. Therefore the conclusion that follows is that the machine was not imported specifically for the purpose of repair and returned it to the buyer, but was re-imported because the buyer returned it to the appellant who then waited until another buyer could be found. This is not the purpose for which the notification has granted exemption and there has been clear attempt to misutilise the provisions of the notification. We also note that the appellant did not even attempt to seek extension of the re-export. Counsel for the appellant says that a letter was written to the Customs authorities, seeking extension but there is no evidence of receipt of such letter by those authorities. The machine was therefore rightly liable to confiscation under Section 111 of the Act and the appellant to penalty.

5. However having regard to the value of the machine, we reduce the penalty from Rs. 2 lakhs to Rs. 1 lakh.