

Commissioner of C. Ex. Vs. Praneet (Wtr) India (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-08-2003

Reported in : (2003)(90)ECC708

Judge : K Usha, N T C.N.B.

Appellant : Commissioner of C. Ex.

Respondent : Praneet (Wtr) India (P) Ltd.

Judgement :

1. This is an appeal at the instance of the Revenue challenging the orders passed by the Commissioner (Appeals), dated 12-3-2003. Under the impugned order the Commissioner (Appeals) had set aside the Order-in-Original passed by the Joint Commissioner, Central Excise, Chandigarh dated 21-10-2002 holding that no duty was payable when the goods returned to the appellants unit for minor rectification were sent back to the buyer after carrying out such rectification.

2. Respondents were entitled to concessional rate of duty of 9.6% on the value of clearances up to Rs. 1 crore in terms of Notification No.9/2001-C.E., dated 1-4-2001. At times goods were returned by the buyers for rectification of certain defects. After carrying out such repair or rectification the goods were again cleared from the factory of the respondent to the buyer. Adjudicating authority took the view that the value of the clearances of returned goods should be taken into account while computing the figure of Rupees one crore for the purpose of benefit of notification dated 1-4-2001. He therefore confirmed the duty demand of Rs.

19,909/- on the alleged excess clearance of goods valued at Rs. 3,11,077/- and imposed a penalty of Rs. 10,000/- and interest under Section 11AB of the Act, was also ordered.

3. Aggrieved by the order of the adjudicating authority the assessee filed an appeal contending that the goods which were cleared after repair is not exigible to duty and, therefore, cannot be taken into consideration for computing the value of clearances up to Rupees one crore. Circular issued under F.No. 354/66/2001-TRU, dated 21-6-2001 was relied on. In the above circular it is clarified that in cases where the process of re-making, re-conditioning does not amount to manufacture, the manufacturer shall pay an amount equal to the Cen-vat credit taken when the goods are removed from the factory again.

Tribunal decision in the case of Shakti Tubes Ltd. v. CCE, Patna - 2002 (139) E.L.T. 626 was also relied on. Commissioner (Appeals) took the view that action taken by the Department in adding the value of the returned goods to the total value of clearances of the unit is not legally correct inasmuch as these goods were already cleared on payment of duty and as such their value was already added to the total clearances. He took the view that goods returned to the appellants unit for minor rectification do not undergo manufacturing process and no duty was payable again when those goods are sent back to the buyer after rectification. Reference was made to the CBEC circular dated 21-6-2001 and decisions of the Tribunal in Shakti Tubes Ltd. v. CCE, PatnaManohar Bros. (Capacitors) (P) Ltd. v.CCE, Mumbai -1999 (107) E.L.T. 813 (Tribunal) = 1999 (30) RLT 477. In view of the above the Commissioner (Appeals) set aside the order passed by the adjudicating authority.

4. Aggrieved by the above order of the Commissioner (Appeals) the Revenue has come up in appeal. Revenue has not been able to show that the activity undertaken by the assessee would amount to manufacturing process. No reason has been adduced before us to take a different view from Shakti Tubes Ltd. (supra). According to us reliance placed by the Commissioner (Appeals) on the Board's circular is proper and justified.

We find no reason to interfere with the order impugned. In a later decision in Kusum Kemicals Pvt. Ltd. v. CCE, Raipur -2002 (144) E.L.T.346 (Tribunal) = 2002 (51) RLT 651 we have taken the view that the value of returned goods is not to be taken into consideration for the purpose of small-scale exemption.

5. In the result, we affirm the finding of the Commissioner (Appeals) and dismiss the appeal filed by the Revenue.

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