Commissioner of Central Excise Vs. S and P Threads (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-09-2003

Reported in : (2004)(91)ECC55

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : S and P Threads (i) Ltd.

Judgement :

1. These appeals have been filed by the Revenue against a common Order-in-Appeal vide which the Commissioner (Appeals) had reversed the Order-in-Original passed by the Additional Commissioner.

2. The only issue involved in these appeals is as to whether the respondents were entitled to the benefit of Notification No. 7/94-CE (NT) dated 1.3.94. The respondents filed application for condonation of delay for claiming proforma credit. But they were served show cause notice dated 15.9.94 that they were not entitled to the benefit of said notification as well as proforma credit. The adjudicating authority denied the benefit of this notification earlier through Order-in-original dated 16.2.96, that order was challenged by them in appeal and then the Commissioner (Appeals) vide order dated 28.4.98 observed that the respondents were entitled to the benefit of Notification No. 7/94-CE (NT) as the sewing thread of synthetic staple fibre was covered under that Notification and under Rule 57A. However, the Commissioner (Appeals) remanded the matter to the adjudicating

authority for considering the request of the respondents for condonation of delay for claiming proforma credit.

3. After remand, the Additional Commissioner through Order dated 31.3.99 rejected the claim of the respondents for proforma credit. The Commissioner (Appeals), through impugned Order has reversed the said order by following the ratio of law laid down by the Apex Court in the case of Formica India Division v. CCE, 1995 (77) ELT 511.

4. The learned SDR has contended that the benefit of notification is not available to the respondents as there exists no sufficient ground to condone the delay for taking proforma credit on the basis of Notification No. 7/94-CE (NT). But in my view, this contention of the learned SDR cannot be accepted. So far as availability of benefit of Notification No. 7/94-CE, to the respondents is concerned, the issue already stands decided in their favour, by the Commissioner (Appeals) vide order dated 28.4.98. No appeal was filed by the Revenue against that order and as such the same had attained the finality. The matter was sent back to the adjudicating authority by the Commissioner (Appeals) only for consideration of the prayer of the respondents for condonation of delay. The Commissioner (Appeals) by following the ratio of law down in Farmica India Division (supra) has condoned the delay and allowed the benefit of proforma credit under the above-said notification. In that case, the Apex Court had observed that the benefit of notification could not be denied to the assessee on technical grounds, when otherwise they were entitled to the benefit.

Therefore, the impugned order passed by the Commissioner (Appeals) is perfectly valid. I do not find any illegality in the order and as such the same is upheld. The appeals of the Revenue are dismissed being without merits.