Marvel Overseas Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-08-2003

Reported in : (2004)(163)ELT373TriDel

Judge : A T V.K., P Chacko

Appellant : Marvel Overseas Ltd.

Respondent : Cce

Judgement :

1. In this appeal, filed by M/s. Marvel Overseas Ltd., the issue involved is whether the communication dated 15.5.1997 by the Asst.

Commissioner is an appealable Order against which the appeal would lie to the Commissioner (Appeals).

2. Shri B.L. Narasimhan, learned Advocate, submitted that the Appellants is a 100% Export Orient Unit manufacturing Cotton Yarn, Knitting Fabric and Garments; that under their letter dated 13.3.1997 addressed to the Commissioner, Central Excise they sought a clarification as to whether the benefit of Notification No. 127/84-CE dated 26.5.84 exempting whole of the Additional duty of Excise, leviable under Additional duty of Excise (Goods of Special Importance) Act, 1957 is applicable to them in respect of the goods sold in Domestic Tariff Area; that the Asst. Commissioner under letter dated 15.5.97 clarified that no exemption from payment of Additional duty of Excise would be granted to the goods produced in

100% E.O.U. and allowed to be sold in Domestic Tariff Area since it is not specifically provided in Notification No. 127/84-CE. the learned Advocate, further, submitted that as the clarification given by the Asst. Commissioner did not appear to be correct they filed an appeal before the commissioner (appeals) who under the impugned Order has dismissed their appeal by holding that the letter issued by the Asst. Commissioner cannot be regarded as a decision or Order appealable under Section 35 of the Act.

He contended that the impugned Order is contrary to the law as Section 35 of the Central Excise Act clearly provides for filing an appeal to the Commissioner (Appeals), if any person is aggrieved by any decision or Order passed by a Central Excise Officer lower in rank then the Commissioner; that the Order passed by the Asst. Commissioner as a decision or Order under the provisions of Section 35 of the Act; that this is apparent from the fact that the Inspector, Central Excise, under letter dated 11.6.97 directed them to deposit duty of Rs. 4,88,779/- being the Additional duty in terms of clarification given in the letter dated 15.5.97; that the Appellants had deposited the said sum under protest and under letter dated 1.7.97 informed the Inspector about the deposit of the amount under protest. He emphasized that the letter of the Asst. Commissioner is a decision/order as it involved a dispute and by this letter a conclusion arrived at against the Appellants relating to the dispute.

3. Countering the arguments Shri Gupta, learned D.R., submitted that there was no dispute at all which has been decided by the asst.

Commissioner under letter dated 15.5.97; that the said letter is nothing but a clarification issued by the Asst. Commissioner as sought by the Appellants; that this is apparent from Para 4 of the statement of facts where the Appellants themselves have mentioned that to be on the safer side they wanted clarification from the department as to whether the benefit of Notification No. 127/84 was applicable to them.

The learned D.R. contended that every communication from the Department cannot be treated as an order as the Department will certainly be giving an opinion on the matter raised in the letter received from the Assessees or persons at large;

that the letter in dispute is nothing but a clarification sought by the Appellants; that if they wanted an Order or decision in the matter they could have raised the dispute and sought an order from the competent authority.

4. We have considered the submissions of both the sides. We find substantial force in the submissions of the learned D.R. that the letter in question cannot be termed as an Order or decision against which an appeal lies under Section 35 of the Central Excise Act. The assessee may seek some clarification from the department or even some information from the department and any reply in response to such query cannot by any stretch of imagination be regarded as an order or decision. If the contention of the Appellants is accepted the department which also guide the Assessee will stop giving any clarification. We, therefore, do not find any infirmity in the impugned Order in which the Commissioner has held that the clarification issued by the Asst. Commissioner is not an appealable order. If they deem it fit they may ask the department to vacate the protest under which the duty was deposited by them. The appeal is rejected.