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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-31-2003

Reported in : (2004)(92)ECC188

Judge : A T V.K., P Bajaj

Appellant : Bajaj Tempo Ltd.

Respondent : Cce

Judgement :

1. In this appeal, filed by M/s. Bajaj Tempo Ltd., the issue involved is whether the benefit of Notification No. 108/95-CE is available to them.

2. Shri S.A. Gundecha, Director of appellant company, submitted that the appellants manufacture motor vehicles; that they supply Temp Traveller Ambullances and Temp Trax Town & Country Vehicles to the Government of Karnataka, Health & Family Welfare Department for the Second State Health Systems Development Project, which was financed by an International Development Association and was approved by the Government; that they had filed a classification declaration under the provisions of Rule 173B of the Central Excise Rules; that they had also addressed a communication to the Assistant Commissioner informing him about the supply of vehicles to the approved project and claimed exemption under Notification 108/95; that, subsequently, the matter was also discussed personally by their representative with the Assistant Commissioner; that the Commissioner, in the impugned order, has confirmed the

demand of duty and imposed penalty of equal amount on the ground that the requisite certificate, as mentioned in the Notification from the appropriate authority, was not produced prior to clearance of the impugned vehicles and as such the condition of the Notification was not fulfilled making them ineligible for the Notification; that the Commissioner has also held that the extended period of limitation for demanding duty is inviolable as, despite being fully aware of the fact that they were not in possession of valid certificate before clearances of the goods, they had misled the Department by submitting an invalid certificate with intention to evade payment of duty.

3. The director of appellant company, further, submitted that, subsequent to the clearance of the motor vehicles, they had submitted the project authorities' certificate duty countersigned by the Principal Secretary to the Government and as such, they have complied with the conditions stipulated in the Notification; that the production of certificate, subsequently, will not affect their right to avail of the exemption; that it has been held by the Appellate Tribunal in the case of C.C.E., Chennai vs. Dynaspede Integrated Systems Ltd., 2002 (147) E.L.T. 541 (T); that production of certificate, belatedly, is not sufficient to deny the benefit of exemption Notification No. 108/95.

Reliance has also been placed on the decision in the case of Bindawala Electrical Industries Ltd. vs C.C.E., Kolkata-I, 2002 (145) ELT 698 (T). Finally, he submitted that the entire demand of duty is barred by limitation as the show cause notice has been issued on 9.5.03 for demanding duty for the period from 30th March, 1999 to 30th Nov., 1999; that they have duly declared, in their classification declaration, that they were clearing the goods claiming exemption under Notification 108/95; that, besides this, they addressed a communication, of this effect to the Assistant Commissioner, with whom the matter was also personally discussed; that, finally, they had produced a certificate from the Project Administrator of Karnataka Health Systems Development Project; that merely because of the fact that it was not countersigned by the Principal Secretary, the Department cannot allege that the material facts were suppressed or the Department was misled by them.

4. Countering the arguments, Ms. Charul Baranwal, learned SDR, submitted that the benefit of Notification No. 108/95 is available subject to the condition that before clearance of the goods, the manufacturer produced before the Assistant Commissioner, a certificate from the Executive Head of the Project implementing authority and countersigned by the Principal Secretary; that the condition of the Notification is very specific that the said certificate has to be produced prior to the clearance of the goods and not subsequently; that as the certificate has been produced subsequently, the benefit of Notification, cannot be extended to the appellants.

5. We have considered the submissions of both the sides. It has not been disputed by the Revenue that the certificate, as contemplated in Notification No. 108/95-CE dated 28.8.95, has been produced by the appellants subsequent with reference to Notification No. 108/95 in the case of Dynaspeda Integrated Systems Ltd. (supra). The Tribunal has held that "Although this is the condition laid down in the Notification, but the said condition has to be held as procedural one in the light of the ratio of the Apex Court judgement rendered in the case of Mangalore Fertilizers & Chemical Ltd. vs. Dy. Commissioner, as reported in 1991 (55) ELT 437 (S.C.)". The Tribunal in that matter has also relied upon the decision in the case of Birla Institute of Technology vs. Collector of Customs, 1991 (56) E.L.T. 753 (T), wherein it has been held that delay in submission of certificate will not affect the grant of exemption. Following the ratio of the said decision, we hold that the benefit of Notification cannot be denied to the appellants merely on the ground that the certificate, stipulated in the Notification, has been produced subsequently, for the clearance of the goods when it is not in dispute that the project is financed by the International Organisation and approved by the Central Government. We also agree with the learned representative of the appellant company that the demand of duty is barred by time as in the facts and circumstances case of the case, the extended period of limitation for demanding duty cannot be invoked as neither the appellants have suppressed by facts nor made any wilful mis-declaration. Besides filing the classification declaration, they had sent intimation also to the Assistant Commissioner about clearing the motor vehicles by availing the exemption under Notification. Further, they had produced a certificate also from the Project Authority. The mere fact that the said certificate was not

countersigned by the Principal Secretary, will not amount to wilful mis-declaration by the appellants. It was opened to the Department to: verify the certificate and demand duty within the time limit prescribed under Section 11A (1) of the Central Excise Act.

We set aside the impugned order and allow the appeal. (Pronounced in Open Court).

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