

Ankit Packaging Ltd. Vs. Cce

Ankit Packaging Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/33264

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-02-2003

Reported in : (2004)(92)ECC97

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

Appellant : Ankit Packaging Ltd.

Respondent : Cce

Judgement :

1. The South Zonal Bench at Bangalore has referred the following issue to the Larger Bench: "Whether an assessee who paid the duty at the normal rate at the commencement of the financial year under the provisions of Notification 1/93 and thereafter was eligible to avail the benefit of notification 1/93 during the same financial year if he satisfies other conditions?" 2 The above issue came up while considering appeal No. E/1493/98 filed by M/s Ankit Packaging Ltd. The essential facts for considering the issue are that M/s Ankit Packaging Ltd. is a small scale unit engaged in the manufacture of Poly Coated Paper/Plastic Films. Such small scale manufacturers are entitled to exemption from central excise duty under Notification No. 1/93 dated 28.2.93. However that notification also contained a proviso which allowed a small scale unit to opt out of the exemption and to discharge duty on the goods manufactured by it at the normal rates. We extract that proviso below: "Notwithstanding the exemption contained in paragraph I of this notification, a manufacturer shall have an option for not availing of the benefit of the exemption contained in said paragraph and to pay duty of excise at the rate

applicable to the specified goods but for the exemption contained in the said paragraph I, subject to the condition that such manufacturer shall pay duty at the rate applicable but for aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which such date of option falls".

3 The basic condition for availing the exemption is that the aggregate value of the clearances made by the small scale unit during the preceding financial year should not have exceeded the quantitative limit prescribed under the notification. This limit was Rs.2 crores, prior to financial year 1995-96. This was increased to Rs. 3 crores in that year M/s Ankit Packaging Ltd.were availing exemption during financial year 1994-95. In the beginning of the financial year 1995-96, M/s Ankit Packaging Ltd. cleared some goods on payment of central excise duty. This was because they required some time to compute the aggregate value of the clearances made by them during the financial year 1994-95, in order to ascertain whether their clearances were within the value limit prescribed for availing the exemption. On 10.4.95 M/s Ankit Packaging Ltd, wrote to the jurisdictional Central Excise authority intimating that they would be clearing the goods in terms of the exemption notification. Central Excise authority objected to this, holding that once they had started paying duty on the goods cleared, they came within the mischief of the aforesaid proviso to Notification No. 1/93, and they were liable to pay duty on all subsequent clearance in the financial year. M/s Ankit Packaging Ltd. contested this finding before the lower authorities submitting that the bar under the proviso applied only to small scale units which opted out of the notification and not to units which had opted in. It was also pointed out that clearance of goods on payment of duty for a few days at the beginning of the financial year cannot be construed as opting out of the benefit of the notification. These submissions failed. Hence the appeal to the Tribunal. The Bangalore Bench has referred the issue to the Larger Bench because it was not noted that conflicting decisions [(Prabhat Forging Works vs C.C.E., Chandigarh 2002 (139) ELT 720 and C.C.E., Coimbatore vs V.N.K Textiles & paper Mills (P) Ltd. 2002 (49) RLT 938] existed on the issue.

4 When the reference came before us, none appeared for M/s Ankit Packaging Ltd. They have submitted a written submission and have requested by their letter dated 19.9.2003 that the case may be decided after considering the points raised in the written submission.

Accordingly, we are disposing of the reference after perusing the records, the assessee's written submission and hearing the learned SDR.5 A perusal of the proviso to the notification leaves no doubt that it relates to a manufacturer who has opted" for not availing the benefit of the exemption". In the present case, the assessee M/s Ankit Packaging Ltd. did not opt for not availing the benefit. Instead it wrote on 10.4.98 stating that it was availing the benefit of the exemption and was clearing the goods in terms of the notification.

Therefore, the finding of the lower authority is contrary to the appellant's option. The only question is whether payment of duty on some goods cleared in the beginning of the financial year could be considered as de facto opting out of the benefit of the exemption notification. We find no warrant for such a view. The notification calls for specific opting out by a manufacturer. There was no requirement to opt in. In the present cas, the assessee has also written to the department informing that it was wanting to avail the exemption notification. In the face of such opting in, there was no justification for interpreting the payment of duty on some goods as opting out.

Moreover the assessee has also explained his reason for clearing some goods on payment of duty at the beginning of the financial year, it required some time to compute the aggregate value of the clearances made during the preceding financial year, so as to be sure that it had not exceeded the qualifying value limit during the preceding financial year. Thus paying duty on the goods cleared during the opening days of the Financial Year was only erring in favour of the revenue and not foregoing an exemption. Such caution in an assessee cannot be turned against him. We find that a similar issue has come up before us in the cas of C.C.E Coimbatore vs Marutham Textiles (P) Ltd and others and we took the view that clearance of some goods in the beginning of the financial year on payment of duty was no ground for holding that the assessee who was an entitled small scale

unit, has opted out of the benefit of Notification No 1/93. In para 12 of our Larger Bench order, we observed as under: "12. A small scale manufacturer of cotton yarn automatically came within the realm of operation of Notification No.1/93-CE date 25.4.94, the date on which cotton yarn was specified for the purpose by the Central Government under Notification No.90/94-CE. None of the respondents opted out of the operation of the Notification at any time thereafter. Therefore, the clearances of cotton yarn from 25.4.94 in chronological order, whether made on payment of duty or not, up to the aggregate value of Rs. 30 lacs would constitute the first clearances in the financial year. The aggregate value has to be reworked and any demand of duty requantified accordingly." The above decision applies equally to the present case, since in the present case, the assessee had not opted out of the benefit of Notification No. 1/93. Instead, it had only opted for availing of the benefit.

6. In view of what is stated above, the reference is answered in favour of the assessee. Registry shall forward the appeal files to Bangalore for being placed before that Bench for passing orders on the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com