

Vadehra Luminaries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-27-2004

Reported in : (2004)(93)ECC259

Judge : S Kang, a T V.K.

Appellant : Vadehra Luminaries

Respondent : Cce

Judgement :

1. The issue involved in these appeals, filed by M/s. Vadehra Luminaries Pvt. Ltd. is whether the value of clearances effected under Notifications No. 5 /98-CE and 5/99-CE, is to be included while computing the aggregate value of clearances under Notification No.8/98-CE.2. Shri A.R. Madhav Rao, learned Advocate, submitted that the appellants manufacture electric kettle, iron, lunch box, food warmer, chapati maker, mixer grinder, electric lamp & plastic containers and claimed exemption in respect of electrical goods under Notification No.8/98 or 8/99 and in respect of plastic containers, they availed of exemption under Notifications No. 5/98 and 5/99; that the Department has confirmed the demand of duty and imposed penalty on the ground that Notification No. 5/98 or 5/99 provides exemption based on quantity and as such the value of clearances effected under either of these Notifications is to be included in the aggregate value of clearances for the purpose of Notification No. 8/98 or 8/99; that Notification No.5/98 exempts specified goods falling under Heading 39.23, 39.24 or 39.26 only subject to the condition that the manufacturer does not avail of the credit of duty paid under Rule

57A or 57B on the products mentioned in column 2 or on any other product manufactured in the same factory; that the Appellate Tribunal in the case of N.M. Nagpal (P) Ltd. v. CCE, New Delhi, 2001 (73) ECC 332 (T) : 2001 (130) ELT 359 (T) has interpreted this condition and has held that the said condition does not convey the meaning that the manufacturer should not avail of the credit of the duty paid in inputs which are used in respect of other products manufactured in the same factory; that the benefit of Notification No. 5/98 or 5/99 is available subject to the said condition Which has been fulfilled by them. He, further, submitted that Notification No. 5/98 exempts the specified goods upto Rs. 85 lakh calculated from 2nd June, 1998 from whole of duty and 8 per cent duty, on aggregate value of clearances exceeding Rs. 85 lakh; that in subsequent financial year, the whole exemption is available upto Rs. 100 lakh; that the expression "upto" in the Notification defines the limit to which the exemption is available under the said Notification; that such a Notification, which provides exemption upto certain value, cannot be considered as a Notification based on value; that Notifications based on value of clearances or quantity, are those Notifications, eligibility to which and availing of which is dependent on the value of clearances or quantity in a particular year; that the expression "based on" connotes that the exemption is available depending on the condition mentioned therein; that for example, such a Notification is Notification No. 1/93-CE; that an assessee was entitled to avail the exemption if the value of clearances in the preceding financial year had not exceeded Rs. 3 crores; that this eligibility to the Notification was dependent on the value of clearances in the preceding financial year; that, similarly, there are exemptions the eligibility to which is dependent on the quantity cleared during a particular year; that Notification No. 5/98 or 5/99, are not value based exemptions and the eligibility is not dependent on the value of clearances or quantity exceeding or non-exceeding any limits. Reliance has been placed in the case of Klar Sehen Pvt. Ltd. v. CCE, Calcutta-1, 1998(102) ELT 637 (T), which provides exemption to the clinical samples of P&P Medicines and this exemption in a particular month was limited to a quantity not exceeding 4 per cent by value of the total duty paid clearances during the preceding month; that it was held by the Tribunal that the exemption under the said Notification was not granted based upon the quantity and clearances made in a financial year; that the exemption

under the Notification was limited to the quantity not exceeding 4 per cent. Finally, he submitted that no penalty is imposable on the appellants as they have not contravened any provisions of Rule 173Q of the Central Excise Rules; that the question, whether an assessee is entitled to the benefit of Notification is purely a question of law and the question of imposition of any penalty does not arise.

3. Countering the arguments, Shri O.P. Arora, learned S.D.R. submitted that Notification No. 5/98 or 5/99, is the Notification providing exemption based on quantity or value of clearances; that the benefit from serial number 70 of the Table annexed to the Notification No. 5/98 provides nil rate of duty to the goods upto Rs. 85 lakh and partial exemption to the goods exceeding Rs. 85 lakh; that in view of this, para No. 4(a) of Notification No. 8/98 is attracted which provides that for the purpose of determining aggregate value of clearances for home consumption, clearances which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other Notification or on which no excise duty is payable for any other reason shall not be taken into account; that as the clearances of the goods under Notification No. 5/98 or 5/99 is based on value of clearances, the value of these clearances are to be taken into account for the purpose of determining the aggregate value of clearances under Notification No. 8/98 or 8/99. He relied upon the decision in the case of *Indian Airlines Ltd. v. CC, Cochin*, 2002 (83) ECC 345 (T) : 2002 (150) ELT 496 (T), wherein it has been held that Exemption Notification is to be construed strictly and benefit of ambiguity must go to State.

4. We have considered the submissions of both the sides. Serial No. 70 of the Notification No. 5/99-CE dated 28.2.99 reads as under: (iii) bags or sacks made out of fabrics (whether or not coated, covered or laminated with any other material) woven from strips or tapes of plastics; and fabrics for making such bags or sacks; (a) on aggregate value of clearances upto Rs. 85 lakhs, calculates from 2nd June, 1998 in the financial year 1998-1999; (b) on aggregate value of clearances exceeding Rs. 85 lakhs, calculated from 2nd June 1998 in the financial year 1998-99; (c) on aggregate value of clearances upto Rs. 1000 lakhs, in any other financial year; (d) on aggregate value of clearances exceeding Rs. 100 lakhs, 8% in any other financial year.

Explanation -- Any clearances for exports or any clearances of goods exempted from duty or chargeable to Nil rate of duty shall not be included in computing the aggregate value of clearances" 5. These Notifications 5/98 and 5/99 provide exemption from whole of the duty of Excise on aggregate value of clearances upto Rs. 85 lakh/Rs. 100 lakh and partial exemption on aggregate value of clearances exceeding Rs. 85 lakh/Rs. 100 lakh. The whole exemption from payment of duty is provided under this Notification upto a specified value and thereafter the exemption is partial. Both these Notifications, thus, provide exemption, full or partial, based on the value of clearances. If the value of clearances is upto Rs. 85 lakh/Rs. 100 lakh, no duty of excise will be payable on the specified goods and if the aggregate value of clearances exceeds Rs. 85/100 lakh, partial duty of 8 per cent will be payable. It is , thus, clear that the Notification is providing exemption based on value of clearances. For considering any Notification, whether it provides exemption based on quantity or value of clearances, it is not necessary that the exemption is depending on the value of clearances or quantity cleared during the preceding financial year. Notification itself can limit the exemption upto a particular quantity or value of clearances which Notification No. 5/98 or 5/99 does. The decision in the case of Klar Sehen Pvt. Ltd. v. CCE, Calcutta-I (supra) is not applicable as it was considering a different Notification No. 48/77 which provides exemption to the clinical samples of P & P medicines upto a specified limit. In that context, the Tribunal observed that exemption under Notification No.48/77 was not granted based upon the quantity of clearances made in a financial year and, therefore, the Tribunal did not consider it that such a Notification where exemption from whole of duty of excise leviable thereon was granted based on the quantity of clearances made in a financial year. In the present matter, the Notification No. 5/98 or 5/99 takes into consideration the value of clearances in a financial year and provides full exemption upto the aggregate value of Rs. 85 lakh or Rs. 100 lakh and partial exemption beyond the aggregate value of Rs. 85 lakh or Rs. 100 lakh. We, therefore, hold that the value of clearances effected under Notification No. 5/98 or 5/99 are to be treated as clearances after availing exemption based on value of clearances and, therefore, these are to be included for the purpose of determining the aggregate value of clearances for home consumption under Notification No. 8/98 or 8/99. Accordingly, the demand of duty is upheld against

the appellants. We, however, agree with the learned Advocate that the issue involved being interpretation of Notification, no penalty is imposable on the appellants. We, therefore, set aside the penalty imposed on the appellants. The appeals are disposed of in the above manner.

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