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P and B Creative Marketing Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-30-2004

Reported in : (2002)(113)LC549Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : P and B Creative Marketing

Respondent : Cc

Judgement :

1. The appellants filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).

2. The brief facts of the case are that the appellants filed a bill of entry dated 5.8.2000 and claimed the benefit of Notification No.80/70-Cus on the ground that the electric pump was imported in lieu of defective electric pump that has been imported earlier.

3. The adjudicating authority denied the benefit of Notification No.80/70-Cus. The appellants filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) dismissed their appeal.

4. The contention of the appellants is that they had imported electric pump which was cleared on payment of duty and their customer had not accepted the pump and the same electric pump was exported for replacement. The supplier of the pump, sent a new electric pump hence as the same pump, on which duty has

been paid earlier exported, to the supplier, therefore, they are entitled to the benefit of Notification No. 80/70-Cus.

5. The contention of the Revenue is that the benefit of Notification No. 80/70-Cus is applicable to the replacement for defective goods which are individual personal property and are not applicable to import by the traders. The Revenue relied upon the decision of the Tribunal in the case of Quality Steel Tubes (P) Ltd., Kanpur v. CCE, Bombay to submit that the benefit of this notification is admissible to the goods imported as replacement of individual personal : property. In the present case, the benefit of Notification No.80/70-Cus was denied. For ready reference the relevant portion of the notification is reproduced below: Exemption to articles supplies free under warranty as replacement for defective one - In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts articles and component parts thereof, when imported respectively for the replacement of defective articles or of components parts thereof from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions, namely: (i) the detective articles were brought into India earlier from places outside India and are private personal properties of the importer.

6. We find that the benefit of Notification will be brought into India from places outside India and private personal properties of the importer. In the present case, it is admitted by the appellants that they are only trading in the goods. This notification came for consideration before the Tribunal in the Quality Steel Tubes (P) Limited v. CC, Bombay (supra) where the Tribunal held that private and personal properties as mentioned in the notification can be taken to mean as belonging an individual personal properties of the importer. In the present case as the goods were not imported by the appellant as an individual and personal properties, therefore, they are not entitled to the benefit of notification. The appeal is dismissed.

The operative part of the order is pronounced in the open court on 30.1.2004]

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