Radiant Engineers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-16-2004

Reported in : (2004)(175)ELT464Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Radiant Engineers

Respondent : Commissioner of Central Excise

Judgement :

1. The Appellants manufacture airconditioning appliances and parts thereof falling under chapter 84, 85 & 90 CETA and avail modvat facility under Rule 57-A of C.E. rules. The products manufactured by the Appellants are covered under modification No. 75/87 dt. 01-03-87 under which goods upto an aggregate value not exceeding to Rs. 5,00,000/- of first clearances are wholly exempt from payment of duty, upto Rs. 15,00,000/- immediately following the first clearances 50% of the effective rate is payable and thereupon full duty. The Appellants filed a classification list effective from 1.4.87 claiming the benefit of Notification No. 75/87. This C.L. was approved by the A.C. on 26-06-87. During the period when CL was pending approved the Appellants cleared their goods paying full rate of duty (40%) even though they were not required to do so. However, after obtaining the approval they started paying @ 20% adv. on the goods cleared in the next slab (upto Rs. 15 lakhs).

2. A show cause notice was issued to the appellants alleging that they were not entitled to the benefit of Notification No. 75/87 as they paid duty even on the first slab of clearances (upto Rs. 5 lakhs) and availed of modvat credit which is not envisaged under the said notification. The show cause notice demanded Rs. 168863/- being the differential duty on the goods cleared at concessional rate of duty for goods under the second slab i.e. Rs. 5 lakhs to Rs. 15 lakhs. The notice was dropped by the Assistant Commissioner the department went in appeal to Commissioner (Appeals) who set aside the order of the lower authority. Hence the appeal.

"A plain reading of above facts reveals that assessee has to avail full exemption upto Rs. 5,00,000/- and then avail concessional rate of duty @ 20% adv for the clearances upto an aggregate value not exceeding Rs. 15 lakhs. The assessee should either to abide by all the provisions of notification No. 75/87 or to pay full rate of duty from the beginning and not in piecemeal. In this case as respondents by not availing first slab exemption under notification 75/87 have forfeited the benefit contained in the said notification. As Appellants have availed modvat credit for the first slab of full exemption they have not followed the conditions as prescribed under the said notification, they are required to pay tariff rate of duty for the entire clearances effected during 87-88." 4. It is a fact that, the Appellants paid full duty even on the first clearances upto Rs. 5,00,000/- till the approval of their classification list as a measure of abundant precaution claiming exemption under 75/87. After the approval of the classification list they paid duty @ 20% adv (50% of the duty of the tariff rate i.e. 40%).

They availed of modvat credit of the duty paid. The department's contention that since the Appellants have not availed full concession for the first slab they are forbident from availing the benefit of notification 75/87 is untenable. In the case of BELAPUR SUGAR & ALLIED INDUSTRIES LIMITED v. C.C.E Aurangabad (1999 (32)) RLT-223 the apex court held that the exemption available to the assessee cannot be denied on the ground that the assessee had already paid duty. In the present case, the appellants paid duty even on the first slab of clearance (upto Rs. 5 lakhs) that however does not disentitle them from availing of the benefit of Notification for the next slab of clearances upto Rs. 15 lakhs. The Commissioner erred in denying the benefit of the said notifications to the Appellants. The appeal succeeds.