

Malik and Co. Vs. C.C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-18-2004

Reported in : (2004)(172)ELT113Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Malik and Co.

Respondent : C.C. Ex.

Judgement :

1. By the impugned order, CCE (Appeals) confirmed the duty demands of Rs. 10,73,430/- arising out of 15 Show Cause Demand Notices consequent to denial by SSI exemption under Rule 175/86. Hence these appeals. They are taken up for disposal by this common order.

a) Assessee was engaged in the manufacture of welding machines at a premises in the jurisdiction of Division A of Mumbai-I Commissioner prior to 1986, and was claiming benefit of notification 77/85.

Clearances in subsequent years were:- Therefore they were eligible to the benefit of SSI notification 175/86 Vide order no 13/M-I/2003 dt.24.7.2003 CCE-Mumbai I, who held- "The value of clearance for F.Y. 1986-87 of M/s Met-- & Co was Rs 14,98,210/- and the value of clearance of all goods from the premises of M/s. Malik Weld was Rs. 8,89,247/-. The clearance of both this units were well within the exemption limit of Rs. 15 lakhs under not.No. 175 86. Both the units would

therefore be eligible for assessee exemption under these notification as their had been hitherto also enjoying the benefit of similar exemption under notification No. 176/77 when this goods were classified under the erstwhile item No. 68 of the Central Excise Tariff before March 1986." b) i) The assessee thus eligibility to benefit of notification 175/86 during 1986-87 is not now in doubt in October 1988, shifted to a new premises falling under Division G of Mumbai I. Commissioner. They filed classification list w.e.f. 1/11/88, continuing and claiming the benefit of notification 175/86 and subsequently every year. They was called for a hearing on 13/8/93, and were also heard on various duly demands notices issued. The Assistant Commissioner vide order dt.26/3/97 denied the benefit of notification 175/86 and confirmed the total demands of duty made in the 15 notices.

ii) Commissioner (Appeals) dismissed the appeal on the ground that para 4(b) of notification 175/86, stipulations about registration as SSI unit were not complied with. This restriction would be applicable to the new - site of the factory of the assessee. They would be not entitled to the benefit of being claimed on bases of past years eligibility under SSI notifications at earlier location in Division A jurisdiction.

c) Tribunal in the case of CCE v. Peripheral India (1998 (103) ELT 501 have held- "7'.... Once the clubbed value of clearance by a manufacturer from more than one factory exceeds the different ceilings prescribed in the notification they would be dealt appropriately." 8...." We find that paragraph 4 which contains the stipulation that the benefit of exemption is available to goods manufactured in factories registered with the Director of Industries or the Development Commissioner (Small Scale Industries) stands relaxed under the proviso their under. Sub-clause (a) of the proviso covers situations where the value of clearances is less than 7.5 lakhs in the relevant year of the proceeding year. Sub-clause (b) of the proviso contains an alternative relaxation where the clearance may exceed the aforesaid ceiling for the manufacturer has availed the benefit of exemption under the notification in the previous year. As long as this requirement is satisfied it gives immunity from the requirement of registration with the concerned Director of Industries or Development Commissioner, as the case may be. Once this is established the benefit available cannot be denied on the ground that the manufacturer has shifted

his premise to another place....." d) We have considered the submission, there is no previous year clearance from the factory at new site and Clause 4 (b) of notification 175/86 is location specific, therefore the benefit to the unit in this case, in Division G jurisdiction site, is not available. However, we cannot agree to this proposition. Since the benefit is available to the status of a manufacturer and all clearances from all sites of such manufacturer are required to be clubbed. Then once we find that the manufacturer, but for the shifting to a new site, entitled to SSI status in the year 1987-88 at the erstwhile site, that status would alter, in that year or subsequently in 1988-89, only if the clearance exceed the ceiling limits in the years 1987-88 or 1988-89, to deny the benefit. The data on clearances, provided in the paper book, not controverted, it is seen that the annual value of clearance are- Div A 1987-88 Rs.13,06,917/-(entitled as per CCE-Mumbai order in original) Therefore the value of clearances in 1988-89, 1990-91, and 1992-93 would entitle the assessee under Clause 4 (a) to the exemption from obtaining a registration. The assessee would be entitled to SSI status manufacturer. Therefore again eligible under Clause (b) for the year 1989-90, 1991-92. Hence no merits are found in the finding arrived by the lower authorities to deny the benefit.

3. The appeal is therefore to be allowed by setting aside the order of denial of benefit of notification and 175/86 consequential demands.

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