ivrcl Infrastructures and Vs. Cc

ivrcl Infrastructures and Vs. Cc

SooperKanoon Citation : sooperkanoon.com/35844

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-05-2004

Reported in : (2004)(97)ECC772

Judge : S Kang, N T C.N.B.

Appellant : ivrcl Infrastructures and

Respondent : Cc

Judgement :
2. Appellants filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals) whereby the benefit of Notification No.17/2001-Cus. was denied in respect of cone crusher.

3. The benefit was denied on the ground that as per condition No. 38 of the Notification, the import should have been made by the Ministry of Surface Transport or a person who has been awarded a contract or a person who has been named as a sub-contractor in the contract and the appellant is a partner in the joint venture company to whom the contract was awarded by the National Highways Authority of India and the bill of entry was filed by the appellant and not by the joint venture company.

4. We find that whether partner of the joint venture company is entitled to import the goods on behalf of the joint venture company claiming exemption under Notification No. 17/2001-Cus. came before the Tribunal in the appellant's own,

reported in, 2004 (62) RLT 714. The Tribunal held as under:- "We find that, in the case of Gammon India (supra), this Tribunal observed to the effect that Gammon - Atlanta Joint Venture was not a corporation and, therefore, there was no question of 'lifting the corporate veil'. In the instant case too, there being no evidence of incorporation of the, SPCL - IVRCL Joint Venture under the Companies Act, we find that the doctrine of 'lifting the veil' is not applicable. However, in our view, there is no reason why the legal entity-cum-partnership concept of Joint Venture adopted by the Apex Court should not be applied to this case. The Commissioner himself recognized SPCL - IVRCL as a Joint Venture. It was a legal entity in the nature of a partnership of the constituent companies. By virtue of the partnership character, any of the partners was entitled to import the goods for and on behalf of the partnership as the Joint Venture agreement did not expressly provide otherwise. As the Joint Venture was a legal entity i.e. a juridical person as ruled by the Apex Court, it was also a "person" for the purpose of condition No. 38 which stipulated that the goods should be imported by a person who had been awarded a contract for construction of roads in India by NHAI. Therefore, we are of the view that the importation and clearance of goods by IVRCL should be considered as having been done by the Joint Venture fulfilling condition No. 38 of the Notification. In view of the Supreme Court's ruling that a Joint Venture is a legal entity in the nature of partnership, we are unable to follow Gammon India (supra) which, we respectfully observe, was decided per incuriam." 5. In view of the above decision of the Tribunal wherein it was held that import of goods by the appellants should be considered as having been done by the Joint Venture fulfilling the condition No. 38 of the notification. We accept the contention of the appellants and the impugned order is set aside. The appeal is allowed. The appellants are entitled to the consequential relief, if any, in accordance with law.