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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-29-1987

Reported in : (1987)(13)ECC262

Appellant : Fellowship of Physically

Respondent : Collector of Customs

Advocate for Pet/Ap. : Shri. V.B. Akolkar

Judgement :

1. None appeared before us for hearing on behalf of the appellants.

However, Shri V.B. Akolkar, counsel for the appellants, in his letter dated 3-2-1987, requested for deciding this appeal on the basis of the written submissions enclosed to the said letter. We, therefore, heard Shri J. Gopi Nath, learned SDR for the respondent. He drew our attention to the findings of the lower authorities and also reiterated the arguments advanced by him in a similar case in Appeal No. CD(SB)(T) 769/79-B-2 (Collector of Customs, Bombay v. Indian Red Cross Society, New Delhi), which was decided by this Tribunal vide Order No.812/86-B-2, dated 22-8-1986.

2. Appellants imported one photo copier machine Sharp SF-770 with spares and consumable from Singapore which was cleared on payment of Customs duty bi Rs. 57,596.25 vide bill of entry Cash No, HC/81/87, dated 8-10-1982. Thereafter, they applied for ad hoc exemption for Customs duty under the provisions of

Section 25(2) of the Customs Act, 1962. Government of India, Ministry of Finance issued ad hoc exemption order No. 231, dated 6-12-1982 exempting the consignment from the payment of Customs -duty. On the basis of the said ad hoc exemption order, the appellants applied for refund of duty paid. The Assistant Collector of Customs rejected the refund application on the ground that as the goods had already been imported, the ad hoc exemption order could not be extended retrospectively. An appeal was filed before the Collector of Customs (Appeals) against the order of the Assistant Collector, but the appeal was rejected by the Collector (Appeals).

Collector (Appeals) held that in terms of Section 12, Section 15 and Section 25 of Customs Act, 1962 any exemption would have to be given either prior to date of entry of goods into the territory of India or at least prior to the dates mentioned under Section 15(1) of the Customs Act, 1962. He also held that since the goods were already cleared prior to the issue of ad hoc exemption, the lower authority has correctly rejected the claim.

3. In their written submissions, the appellants have, inter alia, stated that provisions of Section 25(2) of the Customs Act, 1962 are not identical with the provisions of Section 25(1) of the Customs Act and ad hoc exemption order cannot be interpreted by reference to the provisions of Sections 12 and 15 of the Customs Act, 1962. The powers vested with the Central Government under Section 25(2) of the Customs Act, 1962 are paramount powers which are not fettered with any other conditions or the provisions' of the other Sections such as Sections 12/15 of the Customs Act, 1962. They have pleaded that duty already paid by them as Customs duty on the import of the consignment should be refunded on the basis of ad hoc exemption order issued by the Government of India under Section 25(2) of the Act. In support of their contentions, they have relied on the following decisions of this Tribunal :-(Tribunal), Food Corporation of India v. Collector of Customs, Bombay(Tribunal), Food Corporation of India v. Collector of Customs, BombayCollector of Customs and Central Excise, Rajkot v. Cotton Corporation of India and Ors..

4. We have considered the arguments of learned SDR and also the written submissions of the appellants. In 1984 (17) ELT 180, this Tribunal held that an order issued under Section 25(2) in respect of exemption granted to specific consignments or goods, is valid even if the same have been already cleared, irrespective of the question of retrospectively. In 1985 (21) ELT 128, the Tribunal held that even in a case where Customs duty had been collected, it would be open to the Central Government, in exercise of its powers under Section 25(2), to grant exemption and refund duty. It was further observed that Section 25(2) of the Customs Act does not put any restriction on the Central Government as to the time at which it should grant exemption. In 1986 (7) ECR 54, this Tribunal held that special exemption order is an executive or administrative order and not in exercise of legislative power. Therefore, considerations of retrospectively are irrelevant. In a similar case like the present one, in Appeal No. CD(SB)(T) 769/79-B-2 (Collector of Customs, Bombay v. Indian Red Cross Society, New Delhi), this Tribunal, in Order No. 812/86-B-2, dated 22-8-1986, following the judgment of two High Courts held that refund of Customs duty in respect of a consignment covered by ad hoc exemption should be granted although the goods were cleared before the exemption order was issued. We do not find any justification in holding a different view in the present case.

In the result, following the aforesaid decisions, we set aside the impugned order and allow this appeal.