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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-30-2004

Reported in : (2005)(98)ECC223

Judge : S Kang, a T V.K.

Appellant : Dee Development Engineers Ltd.

Respondent : Cce

Judgement :

1. Appellants filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals) whereby the benefit of Notification No.108/95-CE dated 28.8.95 was denied to the appellants.

2. Brief facts of the case are that appellants are engaged in the manufacture Accessories for Boilers and Tube or Pipefittings of Iron & Steel. The appellants cleared the goods without payment of duty, claiming the benefit of Notification No. 108/95-CE dated 28.8.95, to M/s. Thermax Babcock & Wilcox Limited and the goods were further supplied to M/s. Kakatia Cement Sugar & Industries Limited who were executing Project, which is financed by Asian Development Bank. The appellants claimed the benefit of Notification No. 108/95-CE dated 28.8.95 on the ground that goods were supplied to the Project, which is financed by Asian Development Bank.

3. The benefit was denied on the ground that appellants had not produced any certificate granted by the Project Implementing Authority in favour of the appellants.

4. The contention of the appellants is that they had produced certificate from Project Implementing Authority to the effect that the project is financed by the Asian Development Bank and the Steam generated and accessories were supplied by M/s. Thermax Babcock & Wilcox Ltd. and the goods in question, were cleared by appellants to M/s. Thermax Babcock & Wilcox Ltd. for further supply to the Project.

In the Certificate issued by Project Implementing Authority the name of M/s. Thermax Babcock & Wilcox Ltd. as the supplier of "Steam generator" is mentioned. Therefore, the goods in question are not liable for any duty as per the provision of notification.

5. We find that Notification No. 108/95-CE dated 28.8.95 provides that for availing benefit of notification the manufacture has to produce a certificate from the Head of the Project Implementing Authority and countersigned by the officer not below the rank of Joint Secretary to Government of India to the effect that the said goods were required for execution of the Project financed by World Bank, Asian Development Bank or any other intermediate Organization.

6. It is admitted fact that the goods were not supplied directly to the Project financed by Asian Development Bank by the appellants. The Certificate produced by the appellants' shows that M/s. Thermax Babcock & Wilcox Limited are supplier of Steam generator. No certificate issued by the Project Implementing Authority showing the appellants as supplier of the goods, in dispute, to the specified project is produced by the appellants. The Hon'ble Supreme Court in the case of Novopan India Ltd. v. Collector of Central Excise and Customs, Hyd., 1994 (73) ELT 669 (SC) held that a person invoking as exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt, or ambiguity, benefit of it must go to the State. In the present case as the appellant had not produced necessary certificate to show that the goods in question were supplied to the Project Financed by the Asian

Development Bank, we find no infirmity in the impugned order, the appeal is rejected.

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