Commissioner of Central Excise Vs. Lloyd Insulation India

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-06-2004

Reported in : (2005)(98)ECC473

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Lloyd Insulation India

Judgement :

1. The issue involved in this Appeal preferred by Revenue is whether excisable goods manufactured and removed by M/s. Lloyd Insulation India are eligible for the benefit of Exemption under Notification No.64/95-C.E., dated 16-3-95.

2. Shri Vikas Kumar, learned Senior Departmental Representative submitted that the respondents manufacture Rigid Polyurethane foam and articles thereof; that Notification No. 64/95-C.E. provides exemption from payment of duty to the excisable goods if supplied as stores for consumption on Board of a vessel of the Indian Navy; that the respondents had availed of the exemption under the said Notification; that the goods were not supplied as a stores for consumption on Board a vessel of Indian Navy; that the Commissioner (Appeals) under the impugned order has allowed the benefit of Notification to the respondents holding that any supplies made to the Indian Navy ships will be eligible for exemption under Notification No. 64/95 provided the goods so supplied are meant for consumption on board of such a vessel, relying upon the decision of the Tribunal

in the case of Goa Paints and Allied Products v. CCE [2001 (127) E.L.T. 489 (Tri.)].

Learned Senior Departmental Representative mentioned that the clearance of excisable goods were effected by the respondents to different parties like M/s. Mazgaon Docks Ltd. etc., that the goods in question were not supplied to the Indian Navy directly and the issue stands settled by the Tribunal in the case of CCE, Bombay v. Moosa Hazi Patrawala [1999 (114) E.L.T. 620 (Tri.)] wherein also the respondents had not supplied the goods to Indian Navy but had supplied the goods to M/s. Voltas Ltd. The Tribunal has held that the benefit of Notification, No. 70/73-C.E., dated 7-5-73 would not be available to the goods. He mentioned that Notification No. 70/73-C.E. also provided exemption to excisable goods supplied as stores for consumption on Board a vessel of the Indian Navy. He also mentioned that the Appeal filed by M/s. Moosa Hazi Patrawala has been dismissed by the Supreme Court as reported in 2000 (119) E.L.T. A82 (S.C.). He also relied upon the decision in the case of CCE v. Impreg and Insulations [1999 (112) E.L.T. 292 (Tri.)l and CCE, Chandigarh v. Leader Engineering Works, [2000 (122) E.L.T. 831 (Tri.)j wherein also the goods were supplied availing the benefit of Notification No. 64/95 to M/s. Mazgaon Docks Ltd., the Tribunal has held that the goods supplied to the ship builders are not entitled for the benefit of Notification No. 64/95 as the goods are not supplied to the Indian Navy as stores. He, therefore, contended that in view of the fact that decision in the case of Moosa Hazi Patrawala has been affirmed by the Supreme Court, the respondents are not eligible to the benefit of Notification.

3. On the other hand, Shri K.K. Shroff, learned Advocate, submitted that they are supplying Rigid Polyurethane foam, insulated Boards/secondary pipes to vessel of the Indian Navy which are already in existence; that the supplies are for replacement/refurnishing of ships of the Indian Navy; that the supplies are infact supplies as stores and consumption on board vessels of the Indian Navy; that therefore, the goods supplied by them qualify for the benefit of exemption; that in a similar issue, the Tribunal's Bench at Mumbai has allowed the Appeal filed by them; that the question of direct supply under Notification No. 54/95 is not envisaged; that the Notification only envisages the supply to the Indian Navy and

not direct supply; that the decisions relied upon by the learned Senior Departmental Representative in the case of Impreg Insulation and Moosa Hazi Patrawala has been distinguished by the Tribunal in the case of Goa Paint and Allied Products. Finally, he submitted that certain goods had gone directly to Indian Navy in respect of which the benefit of Notification would in any case will be available to the respondents.

4. We have considered the submissions of both the sides. Notification No. 64/95 exempts all goods other than cigarette if supplied as stores for consumption on board a vessel of the Indian Navy. The exemption provided by the Notification is very clear and specific that the exemption will be available only to the goods if supplied as stores for consumption on Board a vessel of the Indian Navy. We do not agree with the learned Advocate for the respondents that the Notification does not stipulate direct supplies to Indian Navy. The Notification clearly stipulates supplies of goods as stores for consumption on board a vessel to Indian Navy only. It does not anywhere provide that the goods can be supplied duty free to any person as stores for consumption on board a vessel of Indian Navy. It is not in dispute that the goods have not been supplied to the Indian Navy but have been supplied to other parties like Mazgaon Docks. The issue involved in the present Appeal is no more res integra as the issue had been decided by the Supreme Court inasmuch the Appeal filed by M/s. Moosa Hazi Patrawala against the denial of benefit of Notification No. 70/77, which is para materia to the Notification No. 64/95, has been dismissed. The Tribunal has in other cases also such as Impreg & Insulations and Leader Engineering Works has held that the benefit of Notification No. 64/95 will not be available to the goods supplied to a third party. The respondents have relied upon the decision in the case of Goa Paints and Allied Products (supra) based on Certificate given by Naval authorities that the goods purchased from Goa Paints and Allied Products were exclusively for use on board the vessels of Indian Navy and will be exempt from excise duty. The Tribunal distinguished the decision in the case of Moosa Hazi Patrawala by merely observing that "the facts as were before the lower authorities are not spelt out in the Tribunal's judgment." In any case the decision in the case of Moosa Hazi Patrawala has been affirmed by the Supreme Court and as such the said decision has to be made applicable. In the case of Moosa Hazi Patrawala, as pointed out

by the learned Senior Departmental Representative, the goods were supplied to M/s. Voltas Ltd. who had supplied the goods to M/s. Garden Reach Ship Builders Engineering Pvt. Ltd. The Tribunal has disallowed the benefit of Notification in Moosa Hazi Patrawala case as the goods had not been supplied to the Indian Navy. Our attention has also been drawn to the decision of the Tribunal in the case of Kirloskar Oil Engines ltd. v.CCE [2003 (156) E.L.T. 859] wherein the Tribunal has held that the diesel internal combustion engine or components thereof for fitment on Navy or coast guard ships cannot be construed as ship stores and are not entitled to the benefit of Notification No. 64/95-C.E. and the certificate from Coast Guard that engine was fit for stores has been held to be irrelevant as Notification did not provide for production of such a certificate. The Appeal against this decision has been dismissed by the Supreme Court as reported in 2004 (163) E.L.T. A209 (S.C).

Further, the Review Petition by M/s. Kirloskar Oil Engine Ltd, has also been dismissed by the Supreme Court as reported in 2004 (167) E.L.T.A97. The submissions regarding direct supply to Indian Navy cannot be considered at this stage as the same had not been raised before the lower authorities and it requires verification. Following the ratio of the decision relied upon by the learned Senior Departmental Representative, we set aside the impugned order and allow the Appeal.

The respondents are therefore, liable to pay the duty on the impugned goods. However, we do not find this to be a fit case for imposition of penalty as the issue involved is whether the benefit of Notification was available to the respondents or not. We, therefore, hold that no penalty is imposable on the respondents.