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Guard Electronics Systems Pvt. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-02-2004

Reported in : (2004)(97)ECC761

Judge : S Kang, Vice, A T V.K.

Appellant : Guard Electronics Systems Pvt.

Respondent : Cce

Judgement :

1. In this appeal filed by M/s Guard Electronics Systems Pvt. Limited, the issue involved is whether the benefit of Notification No. 10/97-CE was available to the goods manufactured and cleared by them.

2. Shri L.P. Asthana, learned Advocate submitted that the appellants manufacture Uninterrupted Power Supply Systems (UPSS), that Notification No. 10/97-CE dated 1.3.97 exempts Scientific and Technical instrument apparatus equipment and their accessories and spare parts if supplied to Public funded Research Institution or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College subject to the conditions specified in the Notification; that one of the condition stipulated in the notification is that the Institution should be registered with the Government of India in the Department of Scientific & Industrial Research and the manufacturer produces at the time of clearance, a certificate from the Head of the Institution in each case, certifying that the said goods are required for research purposes only; that the

appellants had cleared 8 UPSS in November 1999 and January 2000 to Jamia Hamdard availing the benefit of notification, though no certificate as stipulated in the notification was produced by the purchaser; that the Revenue has thus confirmed the demand of duty and imposed penalty for clearance of the goods without the production of the necessary certificate; that the certificate dated 27.4.2000 submitted by them clearly shows that Jamia Hamdard was not registered with the Department of Scientific and Industrial Research on the days the goods were cleared by the appellants to them availing the benefit of the exemption Notification.

The learned Advocate, further, submitted that Jamia Hamdard University had applied to the Ministry of Science & Technology on 15.11.99 for issuance of certification in terms of the excise Notification; that the Revenue has failed to appreciate the difference between conditions which are substantive and those which are procedural in nature; that the fact that Jamia Hamdard is a University established under Section 3 of the University Grants Commission Act and that the impugned goods were required for research purpose is a substantive requirement and the certificate and the time of production of certificate are procedural matters only; that as the appellant has substantially complied with the conditions of the Notification, there is no justification for disallowing the benefit of the notification. He relied upon the decision of the Supreme Court in the case of Mangalore Chemicals and Fertilizers Ltd. v. Deputy Commissioner, 1991 (55) ELT 437 (SC) wherein it has been held that some conditions may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure and it will erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve. He, therefore, contended that the objective of the notification is to extend the benefit of the exemption to a University, which is engaged in research, is complied with in the present matter. He also relied upon the decision in the case of SKF Bearings India Limited v. Collector of Customs, Bombay, 1999 (109) ELT 774 (Tri.) wherein it has been held that production of a certificate is only a procedural requirement to prove that goods imported are used for initial setting up or assembly or for manufacture of a article and the certificate can be produced at any stage by importer for availing the benefit of notification. Reliance has also been

placed on the decision in the case of Oil India Limited v. CC, 1992 (37) ECC 89 (T): 1992 (57) ELT 449 and Auto Tractor Limited v. CC (A), 1989 (20) ECC 42 (SC) : 1989 (39) ELT 494 (SC).

3. Countering the arguments Shri Kumar Santosh, learned SDR, submitted that in the present matter the goods are manufactured by the appellant and they can avail the benefit of the notification for clearance of goods on fulfilling conditions stipulated in the notification; that the conditions of the notification are to be in fact fulfilled by their purchasers and the certificate has to be produced by the purchasers to the effect that they are registered with the Government of India in the Department of Scientific and Industrial Research; that in absence of such a certificate produced by their purchasers the appellants were not in a position to clear the goods without payment of duty; that the appellants cannot take upon themselves to waive the conditions stipulated in the notification for the purpose of availing the notification. The learned SDR emphasized that the conditions stipulated in the notification are substantive in nature and not procedural in nature as the benefit of the Notification is only available if the Institution is registered with the Government of India in the Department of Scientific and Industrial Research and on the date goods were removed, they were not so registered. The learned SDR finally mentioned that in all the decisions relied upon by the learned Advocate, the certificate in question was to be produced by the appellants themselves and not by a third party; that accordingly the ratio of those decisions are not applicable to the present matter.

4. We have considered the submissions of both the sides. The goods manufactured by the appellants are chargeable to Central Excise duty.

Vide notification issued under Section 5A of the Central Excise Act the goods have been exempted from payment of duty if these are supplied to the Public Funded Research Institutions or University etc. which are registered with the Government of India in the Department of Scientific and Industrial Research. It is not in dispute that the date on which the appellants removed the goods availing the benefit of Notification No. 10/97-CE, their customer was not registered with the Department of Scientific and Industrial Research. In absence of such registration their

purchaser was not falling whether the ambit of Notification. We agree with the learned SDR that it is not open to the manufacturer himself to waive the conditions stipulated in the notification for the purpose of clearing the goods without payment of duty to any institutions which is required to be registered with the Department of Scientific and Industrial Research. If it is left to the option of the manufacturer to clear the goods without observing the conditions stipulated in the notification, this will create a complete chaos. The benefit of the notification is available only subject to the condition that the institution is registered with the Government of India. The said condition cannot, by any stretch on imagination, the called a procedural one for availing the benefit of the notification. It is to be ascertained first that the institution is registered with the Government of India. As the condition stipulated in the notification is a substantive one its fulfilment was a condition pre-requisite before the benefit of notification can be availed of by the appellant. In view of this, the decision in the case of Mangalore Chemicals & fertilizers Ltd., is not applicable to the facts of the present matter.

Accordingly, we find no merit in the appeal which is rejected.

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