Commercial Engineers and Body Vs. Cce

Commercial Engineers and Body Vs. Cce

SooperKanoon Citation : sooperkanoon.com/36574

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-22-2004

Reported in : (2004)(117)LC446Tri(Delhi)

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

Appellant : Commercial Engineers and Body

Respondent : Cce

Judgement :

1. The appellant has filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).

2. The appellant has engaged in the manufacture of bodies of motor vehicle and were clearing the same to Central Govt. Ordinance Factory.

The bodies cleared by the appellants were used in the manufacture of motor vehicles by Central Govt. Ordinance Factory. The appellants were clearing the goods under Notification No. 64/95-CE. The benefit of notification was denied to the appellant on the ground that the notification exempts the parts of motor vehicles falling under Chapter 87 of Central Excise Tariff as the appellants were clearing the bodies of motor vehicles and not parts of the motor vehicles.

3. The contention of the appellant is that the appellats were clearing bodies of motor vehicles falling under heading 87.07 of Central Excise and these bodies were used in the manufacture of motor vehicles by Central Govt. Ordinance

Factory and these bodies are part of motor vehicles, therefore, the benefit of notification cannot be denied.

4. The contention of the Revenue is that the appellants are not clearing parts of motor vehicles and bodies cannot be treated as parts of motor vehicles, therefore, the benefit of notification is rightly denied to the appellant.

5. We find that the benefit of Notification No. 64/95-CE was denied to the appellant for ready reference. The relevant entry is reproduced below: Exemption to goods supplied for defence and other specified purposes. - In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts, goods specified in column (2) of the Table hereto annexed, and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) subject to the conditions, if any, specified in the corresponding entry in Column (3) of the said Table, from the Table, from the whole of.

i. the duty of excise leviable thereon which is specified in the said Schedule; and ii. the additional duty of excise leviable under the second mentioned Act on goods specified against Section No. 1, 2, 3 and 4 of the said Table: Provided that in respect of Section No. 16 of the said Table, nothing contained in this notification shall apply on or after the 1st day of December, 1999.

Provided further that in respect of Section No. 17 of the said Table, nothing contained in this notification shall apply on or after the 1st day of July, 2002.

under Chapter 45,48, 68, 73, 85, i) used in a Central Govt 87 or motor vehicles in Ordnance Factory for the completely knocked down or manufacture of vehicles falling semi knocked down form under chapter 87 of the said Schedule; and 6. The Revenue is not disputing that the appellants were manufacturing only bodies of motor vehicles and these bodies are classifiable under Chapter 87. It is also not disputed by the Revenue that these bodies are used in the manufacture of motor vehicles by Central Govt. Ordnance Factory. In these circumstances, the findings of the lower authorities that the notification is available to the parts of motor vehicles falling under Chapter 87 of Central Excise Tariff is not sustainable as bodies are also used as parts of motor vehicles. The impugned order is set aside and the appeal is allowed.