Commissioner of C. Ex. Vs. Raj Leather Cloth Industries (P)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-11-2004

Reported in : (2005)(186)ELT332TriDel

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

Appellant : Commissioner of C. Ex.

Respondent : Raj Leather Cloth Industries (P)

Judgement :

1. The Revenue filed this appeal against order-in-appeal passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) allowed the appeal by granting the benefit of Notification No. 14/92, dated 1-3-1992 in respect of the impugned goods.

2. The contention of the Revenue is that initially three show cause notices were issued to the respondents. One show cause notice was regarding classification of the scrap of polyurethane/parings and regarding admissibility of benefit of Notification No. 14/92 and the other show cause notices were issued for consequential demand. The adjudicating authority vide Order-in-Original No. 46/94 to 48/94, dated 13-8-1994 confirmed the demand after denying the benefit of Notification No. 14/92. The respondents filed appeal and the Commissioner (Appeals) vide Order-in-Appeal No. 710, dated 27-9-1994 denied the benefit of notification and remanded the matter for quantification of duty. The adjudicating authority confirmed the demand, the respondents filed appeal and vide impugned

order the Commissioner (Appeals) allowed the benefit of notification and set aside the demand.

3. The contention of the Revenue is that the issue in respect of admissibility of Notification No. 14/92-C.E., has attained finality after passing an order by the Commissioner (Appeals) dated 27-9-1994, which was accepted by the respondents and matter before the adjudicating authority was only in respect of quantification of demand.

On appeal filed by the respondents against the adjudication order where the only issue was in respect of the quantification of demand hence the impugned order is not sustainable in respect of the grant of the benefit of notification which has already attained finality.

4. The ld. Advocate appearing on behalf of the respondents held that the appellants are entitled for the benefit of notification and Commissioner (Appeals) rightly allowed the benefit of notification as the respondents fulfilled the conditions of the notification.

5. We find that the issue in respect of benefit of Notification No.14/92-C.E., was held against the respondents by Commissioner (Appeals) vide order dated 27-9-1994.

6. The Commissioner (Appeals) held that : "as regards clearance of these goods at Nil rate of duty in terms of Notification No.14/92-C.E., the provisions of the notification require that excise duty or countervailing duty ought to have been paid on the plastic from which waste, parings or scrap arise before the benefit of exemption could be claimed on such waste, pairings and scrap. The argument that the question of payment of CVD on the PU Form, blocks or sheets does not arise can only under the fact that the instant case, no such duty liability has been discharged and therefore for fulfilment of the conditions for exemption under Notification No. 14/92 is not satisfied." 7. Thereafter, the Commissioner (Appeals) remanded the matter for quantification of duty. In these situations, we find force in the arguments of the appellant that the de novo proceedings in pursuance to the order-in-appeal dated 27-9-1994 is only in respect of quantification of duty. The

issue for denial of benefit of notification attained finality in absence of any challenge before the higher forum by the respondents.

8. In the impugned order, the Commissioner (Appeals) allowed the benefit of notification which was not an issue before the adjudicating authority as discussed above, which attained finality. In view of the earlier order-in-appeal, the impugned order is set aside and the appeal is allowed.