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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-10-2004

Reported in : (2005)(100)ECC200

Judge : A Wadhwa, S T S.S.

Appellant : Voltas Ltd.

Respondent : The Commissioner of Customs

Judgement :
1. The dispute in the present appeal relates to the availability of Notification No. 16/2000-Cus- Serial No. 181 to the goods imported by the appellants.

2. As per the facts on record, the appellants filed a bill of entry dated 27/02/2001 for clearance of "Rigo make Inline Thermo Forming Machine (Upper Balloon Bell)" classifying it under sub heading 8477.40 along with spare parts and claiming the benefit of Notification No.16/2000-Cus-Serial No. 181, attracting nil rate of duty. The provisional assessment originally adhered to by the Customs authorities was subsequently finalized by the Deputy Commissioner of Customs granting the benefit of the said Notification based upon the certificate dated 28/06/2001 issued by the Ministry of Environment and Forest certifying that the goods stated therein are required for the project for substitution of Ozone Depleting Substances (ODS) with Non-ODS technology and are designed exclusively for Non-ODS technology as explained in the notification.

3. Being aggrieved with the above assessment of the Deputy Commissioner, the revenue filed an appeal before the Commissioner (Appeals) primarily on the ground that the literature of the supplier of the goods as also the other material on record showed that the goods were not designed "exclusively" for Non-ODS technology and as such did not satisfy the explanation appearing under Sl.No. 181 of the notification. The above stand of the revenue was accepted by the Commissioner (Appeals). Hence the present appeal.

4. We have heard Shri C.T. Krishnamurthy, Ld. Advocate appearing for the appellants and Shri Vimlesh Kumar, Ld. SDR appearing for the revenue.

5. As per Serial No. 181 of the Notification No. 16/2000-Cus, nil rate of duty is attracted in respect of the following goods:- " Goods required for - (a) the substitution of ozone depleting substances (ODS); (b) the setting up of new capacity with non-ODS technology. Explanation - "Goods ", for the purpose of this exemption means goods which are designed exclusively for Non-ODS technology.

The condition No. 26 attached to the said notification is to the following effect- If, (a) the project for substitution of ozone depleting svbstances (ODS) or the project for setting up of new capacity with Non-ODS technology has been approved by the Steering Committee set up in the Ministry of Environment and Forests for the clearance of such projects; and (b) the importer furnishes in each case a list of the goods required for the aforesaid projects, which is duly certified, to the effect that the goods mentioned in the said list are required for the aforesaid projects, by an officer not below the rank of a Deputy Secretary in the Ministry of Environment and Forests.

6. There is no dispute that the project in question has been approved by the Steering Committee set up by the Ministry of Environment ?and Forest and the goods in question are enlisted and duly certified by the said Ministry by an officer of the rank of Deputy Secretary. The Commissioner (Appeals) while accepting revenue's appeal has observed as under:- "On plain reading of the catalogue of the manufacturer it may appear that the Rigo make Inline Thermoforming Machine, only produces parts of a refrigerator i.e. it manufacturers lines and doors for household refrigerators. But the machine has got further applications for other

uses such as in the field of bathroom furniture and car components and so on. The specific catalogue submitted by the respondent only states "designed especially to manufacture lines and doors for household refrigerator". The specific catalogue does not in any way indicate that the machine is exclusively designed for use only under non-ODS technology while the general catalogue specifies the machines multiple uses. From the submissions made by the respondents it is apparent that the liners and doors manufactured by the said machine only overcomes the problems of stress cracking, if any, in the liners and doors of refrigerators manufactured under non-ODS technology. Further, the technical write up dated 12/02/2001 submitted by the respondent states "the inline thermoforming (or vacuum forming machine) is required in the production line for manufacture of refrigerator and is essential for forming of plastic cabinets and door liners required for domestic refrigerators and refrigeration appliances, using cyclopentane blowing agent and HFC-134 a refrigerant". By this it is abundantly cleared that the machine in question is essential for manufacturing plastic cabinet and door liner required for domestic refrigerators and refrigeration appliances, the only amplification is that such refrigerators and appliances are using cyclopentane blowing agent and HFC-134a refrigerant which is not produced by the said machine and which is produced under non-ODS technology. Thus the respondents require this machine only to produce such liners/door used in refrigerators and refrigeration appliances manufactured under non-ODS technology.

It is seen from the submissions made that the respondents have already implemented the non-ODS technology. Therefore, it cannot be said that the machine in question is exclusively designed for non-ODS technology or the substitution of ozone depleting substances (ODS) or the setting up of new capacity with non-ODS technology.

Further, as per the conditions the project for substitution of ODS or the project for setting up of new capacity with non-ODS technology requires approval of Steering Committee set up by the Ministry of Environment and Forest and the importer furnishes a list of goods required for the aforesaid project are duly certified to the effect that the goods mentioned in the list are required for the aforesaid project by an officer not below a rank of the Deputy Secretary in the Ministry of Environment and Forest. The "in built advance forming technology" of the said machine of Rigo make as confirmed by the manufacturers and submitted by the respondents at the most can be construed to produce only plastic liners/doors to withstand the stress, if any, occurring due to implementation of non-ODS technology. Therefore, there is no basis to the respondent's contention that the said machine is exclusively non-ODS technology and thus cannot qualify for exemption under the notification No. 16/2000 and 18/2000".

Thus it is clear from the above reasoning of the appellate authority that the benefit of the notification has not been extended to the importer on the ground that the machine in question is used for producing plastic cabinets and door liners required for domestic refrigerators and refrigeration appliances and there is nothing in the manufacturer's catalogue that the same are exclusively designed for use only under Non-ODS technology.

7. On the other hand the appellants have pleaded that it was not open to the Customs authority to ignore the certificate issued by the Ministry of Environment and Forest for satisfaction of the Condition No. 26, annexed to the said serial number of the notification; that the goods in question were cleared by the Steering Committee and the certificates were issued by an expert body; that the department does not have any authority to sit in the judgement over the correctness of the said certificate; that the observations of the appellate authority that the goods in question are not designed exclusively for ODS technology are in the nature of self opinion of the authority and are not based upon any expert's opinion. Merely, because the word "exclusively" is not used in the manufacturer's catalogue cannot be made a ground for denying the benefit of the notification. Non-ODS technology is using Cyclopentane as a blowing agent with two Polyurethane chemicals i.e. Polyol and Isocyanate. They have also placed on record a technical write up showing that Non-ODS are those which does not further damage the ozone layer of the atmosphere and cyclopentane and R-134 (a) is a Non- ODS. It has further been argued that the appellate authority observation that they have already implemented the Non-ODS technology and, as such, the machine in question cannot be said to be exclusively designed for Non-ODS technology cannot be made the basis for denying the benefit of the notification, inasmuch as the

notification extends the benefit to the goods required for the substitution of ODS as also to the setting up of new capacity with Non-ODS technology.

8. We have considered the submissions made by both sides. The appellants have produced on record a manufacturer's letter dated 29/06/2002, {the said letter was before the Commissioner (Appeals) also} to the effect that where the refrigerators are produced only with Non-ODS technology which demands highly stringent pecifications/requirements of plastic liner, it is a pre-requisite and necessity to avoid or minimize stress and formation of cracks due to reaction between cyclopentane and the liner by using advanced forming technology, which is being built into the "Inline Thermoforming" Machine of Rigo make under import. Apart from the certificate issued by the Deputy Secretary in the Ministry of Environment and Forest, the appellants have also produced a letter dated 10/04/2002 by the Joint Director issued to Deputy Commissioner of Customs confirming the following:- "The project of M/s. Voltas Ltd, Hyderabad Unit for setting up of new capacity of Commercial Coolers production (Refrigerator appliances) line with Non-ODS technology was approved by the "Steering Committee " set up in the Ministry of Environment and Forests, Government of India, New Delhi.

The essentiality and exclusiveness of the "Rigo" make in line Thermoforming Machine with accessories and tooling for production of Refrigerator appliances with Non-ODS Technology has been examined by the Steering Committee, which consisted of Engineering/Technical experts.

Para No. 2 is further clarified that goods mentioned in para No. 3 of the certificate for setting up of new capacity with Non-ODS technology as per the above notification number." As such, we find that the two conditions appearing in Serial No. 26 of the Notification stands duly fulfilled by the applicants. When there is expert's opinion available on record, the benefit of the notification can not to be denied and as rightly contended by the appellants, the correctness of the said certificate cannot be questioned by the personal opinion of the authority deciding the issue. The Bombay High Court in the case of Bombay Chemicals Pvt Ltd. v. Appellate Collector reported in 1990 (49) ELT 190 (Bom.) has held that the certificate granted by Director General of Technical Development or the Director of

Industries under the notification are binding and conclusive and the department is not empowered to question such certificate. To the similar effect is the decision of the Tribunal in the case of Equipment Sales Corporation v. Collector of Customs (1989 (39) ELT 431 (Tri.) laying down that the certificate issued by the authority specified in the notification itself shows that a particular items is life saving equipment and said certificates have to be given credence. Inasmuch as there is no dispute about certificate having been granted by the Ministry of Environment and Forest and the goods in question having been approved by the Steering Committee as the goods for substitution of ODS, the disputed issue as to whether the goods are ODS technology or not should not invite any doubt or dispute as rightly contended by the Ld. Advocate appearing for the appellants. The absence of the expression exclusive as appearing in the explanation to the Serial No.181 from the manufacturer's catalogue does not ipso facto lead to the conclusion that the goods are not meant exclusively for Non-ODS technology. In fact the certificate granted by the Ministry are sufficient to hold that the goods are meant for Non-ODS technology.

10. In view of the foregoing, we set aside the impugned order and allow the appeal with consequential relief to the appellants.