Commissioner of Central Excise Vs. Flex International

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-2004

Reported in : (2005)(182)ELT102TriDel

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Flex International

Judgement :

1. In this appeal, which has been filed against the impugned order in appeal by the Revenue, the issue relates to the availability of the benefit of the SSI exemption to the respondents.

2. The Revenue has sought to deny the benefit of SSI exemption to the respondents who are engaged in the manufacture of Hosiery flat knitting machines on the ground that they had used the brand name "Elex" of another person namely M/s. Elex Engineering Works during the period in question i.e. 1-10-1994 to 16-9-1998, but the learned Commissioner (Appeals) has not accepted this ground and allowed the benefit of SSI exemption to them.

3. We have heard both the sides. We find that the respondent is a proprietorship concern of Shri Gurdev Singh who established the firm in the year 1981. The plea of the department that he had used the brand name 'Elex' of another person namely M/s. Elex Engineering Works on the knitting machines manufactured by

him in his factory, does not stand substantiated from any tangible evidence. Except his bald testimony recorded on 16-9-98 regarding the use of brand name of 'Elex' by his firm, the respondent, there is no other evidence to prove this fact.

His bald testimony had rightly not been accepted by the Commissioner (Appeals) as he retracted the same and no evidence has been brought by the Revenue on record to corroborate it. Rather, he himself has produced certificates of the buyers detailed in the impugned order itself to whom he had been supplying the knitting machines, and in these certificates they had certified that they never purchased the machines from the respondent firm with the brand name 'Elex'. The certificates of those buyers had not been found to be fictitious, false or factually incorrect.

4. For want of any substantial evidence, to prove the use of brand name 'Elex' of another person, in the manufacture and clearance of the goods (Knitting machines), the Commissioner (Appeals) has rightly allowed the benefit of SSI exemption to the respondent, after setting aside the order-in-original. The case of the respondent, also stand covered by the ratio of law laid down by the Tribunal in the case of Elex Industries v. CCE, Chandigarh [2003 (158) E.L.T. 602] wherein also in identical facts/circumstances, the benefit of SSI exemption was sought to be denied to the appellants therein for having used the brand name 'Elex' of another person but the same was not accepted by the Tribunal and the benefit of SSI exemption was allowed.

5. In the light of the discussion made, we do not find any illegality in the impugned order and the same is upheld. The appeal of the Revenue is dismissed.