Maharaja Processors Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-22-2004

Reported in : (2005)(101)ECC318

Judge : N T C.N.B.

Appellant : Maharaja Processors

Respondent : Cce

Judgement :

1. The appeal is directed against denial of abatement claim of the appeal under Rule 96ZQ(7). The appellant was a textile processor and was discharging Central Excise duty under compounded levy scheme. The processing was being carried out by using one stenter and the appellant had already discharged duty for the month of March 2000. The appellant filed his letter dated 10th March 2000 in the office of the Commissioner of Central Excise, New Delhi by way of intimation about closure of the stenter. This letter stated as under: "We would like to declare that we have decided to terminate all the facilities for carrying out bleaching, dyeing, printing of woven fabrics from our factory for which we will stop all above noted process of woven fabrics at 23.00 hrs of 15.3.2000 and thereafter will dismental all the concerned machineries i.e. stenter, jiggers, wintches.

You are requested please accept our intimation and issue orders to the needful."

2. The claim of abatement was for the period from 16.3.2000 to 31.3.2000. Copies of the letters were independently given to the Jurisdictional Assistant

Commissioner and Superintendent also. Pursuant to this letter the appellant's stenter was sealed by Central Excise Officer on 15.3.2000. All the same the appellants' claim for abatement was rejected under the impugned order. Two grounds have been taken in the order. The first being is that in terms of Sub-rule A of Rule 7 of Rule 97ZQ, the appellant should have informed in writing about the closure "atleast three days prior to the date of the closure." But in the present case, though the closure was from 2300 hours on 15.3.2000, the application has been filed only on 13.3.2000. The second ground is that the abatement is applicable "only on complete closure of the factory and not on closure of a stenter in terms of Sub-clause (9) of Sub-rule (7) of Rule 96ZQ. It is mentioned in the impugned order that the Deputy Commissioner has reported that "only fabrics section of the factory was closed".

3. The contention of the appellant is that the impugned order is entirely erroneous on both counts. It is being pointed out that, in terms of Section 10 of General Clauses Act, the Commissioner should have excluded the holiday 13.3.2000 and taken the intimation as filed within time. On the second issue, the appellant's contention is that since there was only one stenter working in the premises, its closure should have been treated as closure of the factory. It is further being pointed out that, in the present case, since the appellant had discontinued the processing activity altogether w.e.f. 15.3.2000 by dismantling the machinery, there could be no finding that the appellant had not closed the factory.

4. I have heard the learned DR also who has pointed out that the Commissioner was right in regard to both the findings inasmuch as the intimation was filed only on 13.3.2000 while the closure was sought on 15.3.2000. He has also pointed out that since the Dy. Commissioner reported that only fabric section has been closed, the Commissioner was right in holding that the entire factory was not closed.

5. The findings in the impugned order do not appear to be correct. The appellant's intimation was for permanent closure of his textile processing activity at the given premises. The intimation specifically stated that at 2300 hours on 15.3.2000 the closure was to take effect.

Therefore, his claim was for abatement from 16.3.2000. Since the intimation was filed on 13.3.2000, it was three (days) prior to the closure of the unit i.e. 13, 14 and 15.3.2000. In these facts, it would appear that even without resort to Section 10 of the General Clauses Act, the appellant's intimation was within time. Since the sealing of the unit had taken place on 15.3.2000, it was not proper on the part of the department to raise the dispute of delay in filing for the purpose of denying abatement. Further, abatement is available under the Rule for any continued closure for more than seven days. Therefore, the abatement, in any case, was to be allowed after three days from filing of the intimation. Therefore, denial could not be for the entire period. With regard to the second dispute, it is to be noted that the appellant's processing activity involved only one stenter machine. That machine was being closed and dismantled for good. In such a situation, the authority should have accepted that the requirement of closure was satisfied. A legal provision cannot be stretched beyond the scope of the activity covered by that section. The impugned order only mentions that the Dy. Commissioner had conveyed that only fabric section of the factory was closed. It does not say what other activity, if any, was taking place in the factory. Therefore, there is no positive evidence to support a finding that the factory was not completely closed. The appellant's case is covered by the decision of the Tribunal in the case of 2002 (141) ELT 105.

6. In view of what is stated above, the impugned order is set aside and appeal is allowed with consequential relief, if any, to the appellant.