

C.C.E. Vs. S.P. Tools Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-13-2005

Reported in : (2005)(100)ECC359

Judge : P Bajaj, M T K.C.

Appellant : C.C.E.

Respondent : S.P. Tools Pvt. Ltd.

Judgement :

1. In this appeal, the Revenue has questioned the validity of the impugned Order-in-Original vide which the learned Commissioner as Adjudicating Authority has allowed the benefit of SSI exemption notification No. 175/86/-CE dated 1.3.86 and other relates exemption notification, to the respondents.

2. The Revenue has sought to deny the benefit of SSI exemption notifications to the respondents on the ground that they were using monogram of another person on their goods viz., rolling mill rolls, in the manufacture of which they were engaged during the period in question. The learned Commissioner has not accepted this ground of the Revenue on the ground that the goods were even not capable of affixation of any brand name/monogram.

3. The learned SDR has contended that putting up the monogram on the packing slips which were kept in the packed boxes by the respondents while clearing the goods in terms of para 7 of the above referred SSI exemption notification No

175/86. He has sought support to his argument from the judgment of the Tribunal in the case of *Trupati Multi Services v. CCE 4*. On the other hand, the learned counsel has reiterated the correctness of the impugned order and argued that mere placing of the packing slips bearing the monogram of another person, in the boxes while clearing the goods did not amount to affixation of the monogram of another person by the respondents. He has relied on two judgments of the Tribunal, (i) *Essma Woollen Mills (P) Ltd. v. CCE, Chandigarh-II - 2002 (141) ELT 550* and (ii) *Suprex Industries v. CCE, Jamshedpur - 1999 (112) ELT 122*.

5. We have heard both sides and gone through the impugned order and the record.

6. We find that the goods in dispute on which the respondents are alleged to have used the monogram of another person i.e. DTPL, are rolling mill rolls. The statement of Subash Chandra Badkul, Executive Director of the respondents was recorded by the Revenue during the investigation and he categorically stated that although they have had the intention to do so but could not carry out only due to non-availability of a suitable technique.

His statement does not stand falsified or contradicted from the evidence on record. The Commissioner has observed that the goods were not capable of embossment of any trade name/monogram. Mere placing of packing slips bearing monogram of another person in the boxes in which the goods were packed, in our view, did not amount to embossment of the monogram on the goods of another person by the respondents. There is nothing on the record to suggest if packing slips were wrapped around each roll or were pasted on the rolls by the respondent. It is only in that event, it could be inferred that the goods carried monogram of another person and the respondents violated the terms of para 7 of the SSI exemption notification, referred to above, but not in the present situation. The ratio of law laid down in *Trupati Multi Services v. CCE, Pune*, referred to by the learned SDR, is not attracted to the present case as in that case, the brand name was affixed on the container in which the goods were packed and for that reason, it was observed that it amounted to violation of paragraph 7 of the SSI Exemption notification. But such is not the position in the present case. Rather, the

Tribunal in the *Superex Industries v. CCE, Jamshedpur (supra)*, referred to by the counsel, has observed that where no brand name has been affixed on the goods buy only mentioned in the invoices, it did not violate the condition of para 7 of the exemption notification. This very view has been expressed by the Tribunal in *Essma Woollen Mills (P) Ltd. v. CCE, Chandigarh-II 7*. In the light of the discussions made above, we do not find any illegality in the impugned order and the same is upheld. The appeal of the Revenue is dismissed. The cross objections filed by the respondents stand accordingly disposed of.

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