Commissioner of Central Excise Vs. Standard Batteries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-2005

Reported in : (2005)(184)ELT42Tri(Mum.)bai

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Standard Batteries Ltd.

Judgement :

1. The respondents herein are engaged in the manufacture of Under Water Electric Storage Batteries falling under Chapter Sub-heading 8507.00 during the period from 1.12.98 to 30.11.93. They cleared the goods declared as "Under Water Batteries" at Nil rate of duty in terms of Notification No. 68/86 dt. 10.2.1986. On investigation it was found that they were clearing cells for sub-marine Batteries and not Under Water Batteries manufactured for use by the Indian Navy and the Notification did not exempt cells and therefore the benefit of the notification was found to be not available to cells cleared by the assessees. Show cause notice were issued on 3.1.1994 covering the period 1.12.1988 to 30.11.1993 proposing recovery of duty of Rs. 7,17,83,720.14. Three more notices were issued; (1) notice dt. 3.6.1994 for the period 1.12.1993 to 31.3.1994 covering an amount of Rs. 1.30 Crores, (2) Notice dt. 1.11.1994 for the period 1.4.1994 to 31.8.1994 covering an amount of Rs. 1.95 crores., (3) Notice dt. 13.3.1995 for the period 1.9.94 to 28.2.1995 covering an amount of Rs. 1.95 crores.

Thus the entire period of dispute in these appeals is from 1.12.1988 to 28.2.1995. The show cause notices were adjudicated by the Commissioner of Central Excise, extending the benefit of Notification No. 70/77 dt.

7.5.1977, which provides for exemption to excisable goods (other than Cigarettes) supplied as stores for consumption on board vessel of the Indian Navy from Excise duty and Additional duty of Excise. Hence these appeals by the Revenue.

2. We have heard both sides. The impugned order is challenged on the ground that cells for Under Water Batteries are never stored on board vessel but are used in the manufacture of Under Water Batteries at Naval Energy Block/onboard a sub-marine vessel and not being stored and not being consumed, are not covered by the exemption. As per Section 2(38) of the Customs Act, 1962, "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting". The term 'consumption' connotes use. It cannot be disputed that the cells were packed and dispatched to the Indian Navy for manufacture of batteries to be fitted to a submarine vessel. The Revenue grievance is that Test Cells should have been held to be ineligible to the benefit of exemption and that demand of duty of Rs. 21,14,905.32 should have been confirmed. We have gone through the cross-objections filed by the respondents (they are in the nature of comments on the department's appeal, and cannot be considered as cross-objection as the assessees are not aggrieved by any part of the impugned order). We find that in respect of Battery Type Upg-125 for Foxtrot Class of submarines, there are 460 cells out of which 448 are used at a time on board the submarine. Four cells are kept at Energy Block, as spares and remaining 8 cells are also spares, which are to be used for replacement purpose.

All Cells get used onboard much before the life of their main counterpart cells . This is on the basis of the letter dt. 26.4.91 of the Ministry of Defence. It is therefore clear that the Test Cells are also supplied as ship stores for consumption onboard a vessel of the Indian Navy. Hence the benefit of Notification No. 70/77-CE has rightly been extended to them.

3. In the result, we see no reason to interfere with the impugned order and accordingly uphold the same and reject the appeals.