

Sail Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Feb-09-2005

Reported in : (2005)(102)ECC254

Judge : J T V.K., M Bohra

Appellant : Sail

Respondent : Commissioner of Customs

Judgement :

1. Heard Shri P.K. Das, Id. Advocate for the appellants and Shri N.K.Mishra, Id. JDR for the Revenue.

2. Shri Das submits that the appellant is a Public Sector Undertaking integrated steel plant. It has a separate Research (R) and Development (D) Centre for iron and steel products situated at Ranchi. He also submits that R & D imported "XMET 840 Portable X-Ray Analyser" for Research & Development Centre at Ranchi. It has filed Bill of Entry No.A-1-543 (cc), dated 22-8-88 and claimed exemption benefit vide Notification No. 70/81-Cus., dated 26-3-81. By virtue of the above Notification, non-commercial research institution were exempted from Customs duty. The goods were directly imported by R & D Ranchi of SAIL as revealed from Invoice, Packing List, Bill of Lading, Bill of Entry, Purchase Order. The Assessing Officer denied the exemption benefit during the assessment of Bill of Entry. The appellant deposited the Customs duty amounting to Rs. 33,29,964.80. Subsequently, the appellant filed refund application dated 20th October, 1986 on

the ground that the imported goods were exempted from payment of duty by Notification No. 70/81-Cus., dated 20th March, 1981 as amended. He also submits that the Commissioner (Appeals) has rejected the appeal on the ground that R & D, Ranchi, of commercial concerns are not entitled to the exemption benefit sought for and confirmed the order of the lower authority. He, therefore, submits that the Notification is applicable on the appellants and their case is squarely covered by the ratio rendered in the case of Indian Telephone Industries Ltd. v. Collector of Customs, Madras reported in 1987 (30) E.L.T. 523 (Tribunal). He submits that R & D Unit is engaged in the research work and not engaged in commercial activity and therefore, the present case is squarely covered by M/s.

Indian Telephone Industries Ltd. referred to above. He, therefore, submits that the findings of the Commissioner (Appeals) is absolutely erroneous and contrary to facts and law of the case and is liable to be set aside. He, therefore, submits that the appeals may kindly be allowed.

3. Shri Mishra submits that the appellant failed to satisfy the conditions laid down in the Notification No. 70/81-Cus., dated 26th March, 1981. He submits that certain conditions are to be fulfilled before any exemption can be granted to the appellants for duty. The appellant failed to satisfy the conditions prescribed under the above Notification. He, therefore, submits that the Order-in-Original & Order-in-Appeal are perfect in consequence with the legal provisions of law and Notification and does not require any interference. He, therefore, submits that the appeal may kindly be rejected.

4. We have perused the case records and have heard the rival submissions advanced by both sides. The Assistant Collector for Appraising Refund Section has observed in his order as under : "On examination of the claim, it is found that in response to this office memo of 20-10-86, party's representation came to explain the claim. He could not produce any documentary evidence to justify that the goods imported are fully exempted from payment of Customs duty.

Conditions as laid down in the Notification 70/81-Cus., are not fulfilled. So the claim is not tenable." The perusal of the Notification 70/81-Cus., dated 26-3-81 revealed that the importer is required to satisfy certain condition, then only he can

be exempted from payment of Customs duty. The conditions are as follows : "(i) a duly authorised officer of the Directorate General of Technical Development certifies in each case that the goods in respect of which the exemption is claimed are such as are not manufactured in India and such certificate is produced at the time of clearance or within such period as the Assistant Collector of Customs, may on sufficient cause being shown, allow in each case; and (ii) the research institution shall furnish a certificate to the Assistant Collector of Customs from an officer not below the rank of an Under Secretary in the Ministry administratively concerned with the said institution to the effect that the import of the goods in respect of which the exemption is claimed is essential for research and the imported goods shall be used only for such purposes by the said institution and the said institution is not engaged in any commercial activity." The importers are required to furnish certain certificates from the authorised officers of the Directorate General of Technical Development certifies in each case that the goods in respect of which the exemption is claimed are such as are not manufactured in India. Further, they are required to furnish a certificate to the Assistant Collector from an officer not below the rank of Under Secretary in the Ministry administratively concerned with said institution to the effect that the import of the goods in respect of which the exemption is claimed is essential for research and the imported goods shall be used for such purposes by the said institution and the said institution is not engaged in any commercial activity.

5. From perusal of the record, it is clear that the appellants failed to produce certificates as mentioned in Notification in paras (i) & (ii). They have only produced one certificate from the Under Secretary of Government of India that Research & Development Centre for Iron & Steel, Ranchi is not engaged in any commercial activity, as such, is engaged only in research and the field of Iron & Steel. But they failed to prove that the imported equipments are not manufactured in India and the imported goods in respect of which the exemption claimed is essential in research and imported goods shall be used only for such purposes. Such certificates have not been produced by the appellants before the Assistant Collector. The Assistant Collector directed the appellant to produce such documents but even after, they could not able to produce any such certificate as required under the Notification. We do not find any infirmity in the order of the Assistant Collector or in the order of

the Commissioner (Appeals). We do not find any force in the appeal and it deserves to be dismissed. Consequently, we dismiss the appeals.

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