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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-22-2005

**Reported in :** (2005)(100)ECC453

**Judge :** P Bajaj, M T K.C.

**Appellant :** Seiko Brushware (India)

**Respondent :** Cc

**Judgement :**

1. In this appeal, the challenge has been made to the impugned order in original by the appellants vide which the adjudicating authority (Commissioner of Customs) has confirmed the duty demand with interest against them, as detailed therein.

2. The issue in this appeal relates to the denial of benefit of Notification No. 34/98-Cus. dated 13.6.1998 to the appellants under which they imported into India bristles without payment of Special Additional Duty of Customs (hereinafter referred to as SAD). The ground on which the benefit of this notification has been denied to the appellants as put forth by the Revenue is that they had violated the condition contained therein in the form of declaration that the sale of the goods shall not be effected from the place located in an area where no tax is chargeable on sale or purchase of the goods. This condition is said to had been accepted by the appellants at the time of clearance of the goods by furnishing declaration to that effect. They have violated this condition as they had sold the goods in Delhi and UP where sales-tax was exempted by virtue of exemption Notification dated

13.10.96 of the Sales-tax Department, Delhi and the relevant Notification of U.P. State Department. This very ground has been reiterated by the learned SDR before us during the course of arguments.

3. On the other hand, the learned Counsel has contended that the exemption notification issued by the Sales-tax Department of Delhi and U.P. from where the goods were sold, only exempted the payment of sales-tax and did not had the effect of rendering the goods not chargeable to tax. Therefore, no violation of the condition of Notification No. 34/98 detailed above, can be said to have been committed by the appellants for confirming the SAD against them.

4. Another contention raised by the learned Counsel is that the adjudicating authority has traveled beyond the scope of the show cause notice by confirming the demand under Notifications No. 57/98-Cus. and 22/99-CX -- the violation of which was never alleged in the show cause notice. Only, violation of Notification 34/98 dated 13.6.98 had been alleged which even stood rescinded by Notification No. 58/98 dated 1.8.98.

5. We have heard both the sides and in our view, the contention raised by the learned Counsel deserves to be accepted. We find that the exemption Notifications issued by the Sales-tax Department of Delhi and U.P., State department from where goods in question after import without payment of SAD and Notification No. 34/98 detailed above, were sold only exempted the payment of tax on the sale and purchase of the goods at that time and but for these exemptions notifications, the goods were otherwise chargeable to tax. It was only the payment of tax which was deferred/exempted under those notifications for the period mentioned therein. The exemption notifications did not render the goods non-chargeable to tax, but only allowed concession in the tax by way of exemption for some period. Therefore, the appellants cannot be said to had sold the goods from the places where no tax was chargeable on the sale/purchase of the goods and thereby violated the condition contained in the above-said exemption Notification No. 34/98-Cus. In this view, we also find corroboration from the ratio of law laid down by the Special Bench of the Tribunal in the case of Collector of Customs v. New India Industries, Bombay, 1985 (21) ELT 159. In that case, it had

been observed that issuance of a notification which allowed concession in the duty, did not lead to the conclusion that the goods were not chargeable to duty. Similarly in the case of Jindal Photo Films Ltd. & Consolidated Photo & Finvest Ltd. v. CC, Mumbai, 2004 (95) ECC 316, the Tribunal has observed that any exemption from payment of tax on goods which are otherwise taxable, will not have the effect of rendering the goods non-taxable. The ratio of law laid down in both these cases squarely covers the case of the appellants.

6. Apart from this, the second contention raised by the learned Counsel that the adjudicating authority has traveled beyond the scope of show cause notice and as such, the impugned order cannot be legally sustained, also deserves to be accepted. In the show cause notice, the violation of condition contained in Notification No. 34/98-CX dated 13.6.98 has been alleged and no reference to any other notification such as Notification No. 58/98-CX and No. 22/99-CX has been made, whereas duty demand has been confirmed under these notifications also.

Notification No. 34/98-CX in fact was rescinded vide Notification No.58/98 dated 1.8.98. No demand could be confirmed under the these two notifications when these were never put to the appellants in the show cause notice. The Adjudicating authority could not travel beyond the scope of show cause notice and as such, the impugned order passed by it is liable to be set aside on this ground also. The ratio of law laid down in IK International v. CC Amritsar, 2002 (142) ELT 185 referred by the learned SDR is not attracted to the facts of the present case as in that case, the interpretation of another Notification No. 56/98 was involved. Moreover, the law laid down by the Special Bench of the Tribunal in the case of CC Bombay v. New India Industries (supra) was not taken note of. In that case, the Bench also did not consider the question as to whether the exemption from payment of the tax on the sale and purchase of goods which were otherwise, taxable, amounted to chargeable to tax or not. The case of the appellants stands fully covered by the ratio of law laid down in Jindal Photo Films & Consolidated Photo and Finvest Ltd. case (supra).

7. The exemption notifications in the case in hand, only suspended the payment of tax on the sale and purchase of goods in Delhi and U.P.areas, for the period for

which these remained in force and as such, did not had the effect of rendering the goods not chargeable to tax altogether. The goods but for the exemption notification, were chargeable to tax.

8. In view of discussion made above, no violation of any condition of Notification No. 34/98 dated 13.6.98, can be attributed to the appellants for saddling them with duty and penalty. The impugned order, therefore, is set aside. The appeals of the appellants are allowed with consequential relief, as per law.

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