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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-2005

Reported in : (2005)(184)ELT371Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Bombay Processors

Respondent : Commissioner of Central Excise

Judgement :

1.1 The issue involved is whether, a delay of about 3 months in filling of an option by the proprietor of this small scale unit, would call for denial of exemption to notification No. 8/99 with effect from 1.4.1999 to 1.8.99. The classification declaration required under Rule 173B for the year 1999-2000 was filed only on 2.8.1999, the goods however were cleared with the exempted rates. Differential duties with interest were therefore confirmed and penalty of Rs. 1000/- under Rule 173Q was imposed.

1.2 The Commissioner (Appeals) did not apply the decision relied by the appellants which are as follows - i) Vickers Sperry of India Ltd 1989 (40) ELT 2002 on the grounds as that case was of exemption not claimed in the classification ii) Vijay Lakshmi Bottler Pvt Ltd. 1991(53) ELT 105 holding that declaration envisaged in notification 80180 was of a procedural nature while herein it was mandatory.

iii) Bombay wore Ropes Ltd. 1991(53) ELT 115 was a case of classification last filed but exemption not claimed facts herein not being same .

iv) Pahetronics Corporation 1999(112) ELT 892, the tribunal ruling was as regards eligibility to SSI notification 175/86 available and that was not subject to holding of CEX Licence is not of use to appellant as the facts are different and the decision held that the exemption would be available if conclusion stipulated in the notification are fulfilled.

i) Substantive benefit cannot be denied for a procedural lapse and they have declared claim under notification 7/97 on all clearance document.

ii) Reiterate the decisions as relied upon before CCE (Appeal) once again.

iii) Rely on Kerala High Court decision in Rice & Oil Mills Partnership Firm Kandassankadavu (1981 (8) ELT 59 KERALA).

2.1 The Ld DR relies on the decision of Eagle Flask Industries Ltd. 2004(171) ELT 290(SC) especially paragraph 6 thereof and submitted that the condition of declaration option as per para 2 of notification 8/99 is a mandatory condition and non-fulfilment the same cannot entitle the eligibility to exemption.

i) The full bench decision in case of Health Way Dairy Product Co.

1978 ELT J 457 SC was not before the Hon. SC in case of Eagle Flask Industries case and that the Eagle Flask case, para6 when read would indicate the same to be the law as regards declaration under notification for Registration only.

ii) The nature of a condition has to be determined & arrived at. In this case, the same i.e. para 2 of notification 8/99 cannot be said to be mandatory as an assessee can opt for the benefit of notification at any time and the conditions of para2 of notification 8/99 are only to be read intotality. Such reading would indicate that it bars pendulum swings of opting in or opting out in the same financial year. In this case the clearances effected with the benefit of notification w.e.f 1st April indicate the option and desire and falling under para 2 is only procedural.

iii) Rely on 1999(55) ELT 437 SC , 1996(87) ELT 593SC to submit that condition and its nature has to be examined and determined and only thereafter the benefit of notification determined. Once it is held that the benefit of notification was available, it has to be thereafter interpreted not strictly but in a liberal fashion to grant the intent and eligibility to those who have entered and thus entitled to the benefit by a strict interpretation of the notification.

3.1 We find force in the submission of the assessee and find that the delay was due to the sickness of the proprietor and the intent to opt and avail the benefit was existing. The benefit thus availed cannot be erased /set aside.