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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-2005

Reported in : (2005)(102)ECC85

Judge : S Kang, Vice, A T V.K.

Appellant : Bhagsons Paint Industries

Respondent : Cce

Judgement :

1. M/s Bhagsons Paint Industries (India) manufactured paints and varnishes. In addition they manufactured Thinners also. The appellants classified Thinner also under Tariff Item 14 of the erstwhile Central Excise Tariff and claimed by exemption under Notification No. 71/78-CE.The Revenue has classified Thinner under Tariff Item 68 of the old Tariff and denied the benefit of Notification No. 71/78 on the ground that the aggregate value of clearance exceeded Rs. 20 lakhs.

2. Shri Bipin Garg, Ld. Advocate for the appellant mentioned that they are contesting the demand of duty only on the ground of time limit; that the show-cause notice has been issued on 5.9.81 for demanding duty for the period 1979 to June 1980. He submitted that initially as per Explanation III to Notification No. 71/78, value of the goods manufactured without aid of power are not to be computed for the purpose of determining the value of clearances under the said notification; that this explanation was amended subsequently by Notification No. 141/79 dated 30.3.79, that they were still under the bona fide belief that as they

manufactured Thinner without the aid of power, the value of clearance is not to be included in the total value of clearances. He further submitted that they have not suppressed any fact as the goods were manufactured in the presence of inspector.

3. Countering the arguments of Ms. Charual Baranwal, Ld. SDR, submitted that no material has been brought on record by the appellants to show that they had declared about the manufacturing of Thinner to the department; that in RT-12 returns filed by the appellant the value of the clearance of Thinner had not been included and as such material fact had been suppressed by keeping the value of the clearances below Rs. 20 lakhs and accordingly extended period of limitation is applicable for the purpose of demanding duty.

4. We have considered the submissions of both the sides. The appellants have not brought on record any material to show that the fact of manufacturing Thinner without the aid of power has ever been brought to the notice of the department. They have also not rebutted the finding mentioned in the adjudication order passed by the Additional Collector, that the value of clearances of Thinner was not mentioned in RT-12 returns filed by them in the department. A bona fide belief said to be held by them is without any basis as the Notification No. 71/78 as amended by Notification No. 141/79 only excluded the value of clearances of specified goods if otherwise exempted. As Thinner is not specified under Notification No. 71/78, their value of clearances has to be taken into consideration. We therefore, hold that the department has rightly invoked the extended period of limitation and upheld the demand of duty. The appeal is rejected.