

Commissioner of Central Excise Vs. Registan Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-05-2005

Reported in : (2006)(193)ELT362TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Registan Pvt. Ltd.

Judgement :

1. In this appeal which has been filed by the revenue against the impugned order-in-appeal, the issue relates to the denial of the benefit of exemption Notification No. 12/2001-C.E., dated 1-3-2001 to the respondents under which exemption has been provided from payment of duty to all goods i.e. readymade garments and apparels other than those bearing a registered brand name.

2. I have heard both the sides and gone through the record. From the record it is evident that the respondents during the relevant period were engaged in the manufacture of apparels and cloths falling under tariff sub-headings 6201.00 and 6202.00. They got the brand name "Anokhi" registered for the export of their readymade garments. But under that very brand name they had been clearing the goods in the DTA also. The contention raised by the Counsel is that since the brand name was registered only for export purposes, the clearance of the readymade garments in domestic market under that very brand name, did not amount to violation of the terms of the above said notification. But I am unable to

subscribe to this contention of the Counsel. Admittedly the respondents have got a registered brand name 'Anokhi' and though it was for export of the goods but they had used this very brand name on their garments cleared by them in the domestic market. The garments cleared by them in the domestic market cannot be said to have been cleared without registered brand name. The perusal of the exemption notification in question shows that where the goods had been cleared under the registered brand name, the benefit of exemption from duty will not be available to an assessee. It is nowhere provided in the notification that the registered brand name should be specifically for the clearance of the goods in the local market. The notification only speaks of the registered brand name whether that brand name has been got registered by the assessee for a limited purposes of export of goods or for all types of clearances. In the instant case though the respondents got the brand name registered for the purpose of exporting the goods, but that very registered brand name has been used by them for clearances of the goods in the domestic market. Therefore, the benefit of above said exemption notification is not available to them.

They are liable to pay the duty on the clearances made by them during the period in dispute.

3. Another contention of the Counsel that the demand is time barred as the respondents informed the Department through letter dated 7-3-2001 that their brand name was not registered for domestic sale of the goods and as such SCN was required to be issued within a normal period of limitation of one year, whereas it was issued beyond that period. But in my view this contention of the Counsel cannot be accepted. In that letter the respondents had nowhere mentioned/disclosed that they were clearing the goods in the domestic area under the same brand name which they got registered for export. There was apparently suppression of facts by them from the Deptt. Ld. Commissioner (Appeals) has also erroneously interpreted the said letter for attributing knowledge on the part of the revenue regarding the clearances of the goods by the respondents under the brand name, in the domestic market. The extended period of limitation has been rightly invoked against the respondents.

4. In the light of the discussions made above, the impugned order dropping the duty demand and penalty against the respondents cannot be sustained and is set aside and the order-in-original in that regard is restored. The liability to pay interest of the duty amount, under Section 11AB also cannot be contested by the respondents, as they are liable to pay the same under the law. However, keeping in view the facts and circumstances of the case and the fact that the duty had been paid by the respondents before issuance of the SCN and the ratio of law laid down by the Tribunal in the case of CCE v. Machine Montell (I) Ltd. reduced to Rs. 50,000/-. The appeal of the revenue accordingly stands allowed in the above terms.

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