Sandur Laminates Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jul-19-2005

Reported in : (2005)(190)ELT109Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Sandur Laminates Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. These 02 (two) appeals are against the Order-in-Appeal No.471/2002-CE, dated 30-7-2002.

The appellants are 100% E.O.U. governed by the Para 9.9(f) of the EXIM Policy 1997-2002. They cleared the goods to Domestic Tariff Area (D.T.A.) on payment of duty of 50% of the duty of the Customs as per Notification No. 2/97, dated 4-1-95. But the above notification provides exemption to all excisable goods produced in 100% E.O.U. when sold in India in accordance with the sub-paragraphs (a), (b), (c) and (d) of Para 9.9 of the policy, as is in excess of the amount calculated at the fate of 50%. Since the notification is not applicable to the appellant unit, the Revenue proceeded against them and demanded duty. The appellants appealed to the Commissioner (Appeals). The Commissioner (Appeals) in the impugned order upheld the orders of the Original authorities. The appellants strongly challenge the impugned order-in-appeal.

3. Shri Vivek Chandy, learned Advocate appeared on behalf of the appellant and Shri G. Ganesh Havanur, learned SDR appeared for the Revenue.

4. The learned Advocate took us through the EXIM policy, Notification and also the Board's Circular No. 42/97, dated 19-9-97 wherein it is stated that- "As per the EXIM Policy the electronic hardware products may be sold into DTA either up to the graded percentage based on their NFEP or they can sell up to 50% of the value of their production on an annual basis into DTA without any minimum NFEP stipulation. However the rate of duty under both the options is the same." The appellants stated that till the issue of the Circular, they were paying duty and since the Circular clarified that the rate of duty for DTA under both the options is the same, they started paying only 50% of the aggregated customs duty. He added that the Department itself is not very clear on the subject. The appellants approached the Customs department on the issue for clarification without any fruitful result.

Me requested that these factors may be kept in mind while deciding the appeals.

4. The learned SDR stated that the Notification is very clear on the issue, therefore, the Order-in-Appeal is required to be upheld.5. We have gone through the records of the case carefully. The appellants relied on the Board's Circular No. 42/97, dated 19-9-1997 and justified the payment of 50% of the aggregated Customs duty on the goods cleared to the DTA. However, this practice is in direct conflict with the notification No. 2/95 which excludes within its scope of clearances under Para 9.9 of EXIM policy. Under these circumstances, the lower authorities have gone by the notification issued. In our view, when there is a Board's Circular which is contrary to the notification, the notification only will prevail. The notification has legal sanctity. It is for the appellants to take up the case with the Government regarding the clarification given in the Circular. Under these circumstances we uphold the Order-in-Appeal and dismiss the appeals of the appellants.