Karwa Export Pvt. Ltd. Vs. Commr. of Cus. and C. Ex.

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SooperKanoon Citation : sooperkanoon.com/40019

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-18-2005

Reported in : (2005)(190)ELT238TriDel

Judge : S Kang, Vice-, M T K.C.

Appellant : Karwa Export Pvt. Ltd.

Respondent : Commr. of Cus. and C. Ex.

Judgement :
1. Heard both sides. Applicants filed this application for waiver of duty.

2. In this case, the benefit of Notification No. 76/86-Cus., dated 10-2-1986 was denied to the Gambier imported on 23-6-2000 on the ground that Notification provides exemption to Kattha and not to Gambier.

3. The applicants relied upon a Circular No. 63/2003-Cus., dated 21-7-2003 issued by the Department of Revenue. The contention is that by this Circular it has been clarified that Notification No. 76/86-Cus.

was amended by Notification No. 16/2003-C.E., dated 1-3-2003 whereby the gambier was excluded from the scope of the Notification No.76/86-Cus. The Board clarified that this exclusion was w.e.f. 1-3-2003 as the amending notification is prospective in nature. The contention is that in view of this Circular the appellants are entitled for the benefit of this notification as the import was made prior to 1-3-2003.

4. The contention of the revenue is that Gambier and Kattha are two different products and the notification provides Kattha only. The Import of Gambier is not entitled for the benefit in this notification.

5. The only issue involved in this appeal is whether Gambier imported on 26-3-2000 is entitled for the benefit of Notification No. 76/86-Cus.

The said notification was amended w.e.f. 1-3-2003 by Notification No.16/2003-C.E. and by this amendment, Gambier was excluded from the scope of the Notification No. 76/86-Cus. and the Board's Circular dated 21st July, 2003 clarified that this amendment is prospective that is w.e.f.

1-3-2003. In these circumstances, as the import was made prior to the amendment, the appellants are entitled for the benefit of this notification. As no other issue is involved in this appeal, therefore, the appeal itself is taken up for hearing after waiving the requirement for pre-deposit of duty. In view of the Board's Circular, the exclusion of 'Gambler' is w.e.f 1-3-2003. The impugned order is set aside and the appeal is allowed.