Commr. of C. Ex. and Cus. Vs. Citizen Technofab P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-18-2005

Reported in : (2005)(188)ELT209Tri(Mum.)bai

Judge : A Wadhwa, S T C.

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

Respondent : Citizen Technofab P. Ltd.

Judgement :

1. Heard both sides and perused the case records, cited case laws and written submissions. In these three appeals filed by Revenue, the dispute relates to availability of small scale exemption to the impugned goods which are ventilation fans and filters. These goods were reclassified by the original authority as parts of air-conditioners under Heading 84.15 denying small scale exemption, confirming a duty demand of Rs. 4,92,903.50 and imposing a penalty of Rs. 1,00,000/-.

2. On appeal, the lower appellate authority has changed the classification of ventilation fans to Heading 84.14 and filter to Heading 84.21 as claimed by the respondents. The lower appellate authority has also allowed the small scale exemption on the ground that these headings are also specified under the relevant exemption Notification No. 1/93-C.E. Hence these appeals by Revenue.

3. The applicant Commissioner does not seem to be aggrieved by the reclassification done by the lower appellate authority. However, it is the contention

of the department that the lower appellate authority has lost sight of the fact that "refrigerating and air-conditioning appliances and machinery and parts and accessories thereof falling under Chapters 84, 85 or 90" are specifically excluded from the purview of the Notification No. 1/93.

4. We are of the view that such specific exclusion in the small scale exemption required the lower appellate authority to specifically consider whether or not the impugned goods are parts and accessories of air-conditioning machinery and appliances or not. Mere reclassification under Headings 84.14 and 84.21 does not automatically entitle these goods to small scale exemption. Not only parts covered under Heading 84.15 are excluded but also other parts and accessories covered under any other heading in Chapters 84, 85 and 90 would be excluded if these are parts and accessories of air-conditioning machinery and appliances.

Our view is in conformity with the earlier decision of the Tribunal in the case of CCE, Madras v. R.G. Bronze Mfg. Co. - 1997 (96) E.L.T. 115 (Tribunal).

5. Shri R.S. Dinkar, ld. Advocate for the respondents submits that the impugned goods are for industrial use and are not parts of air-conditioning machines. He also submits four catalogues for the impugned goods. We find that these catalogues and related submissions have not been considered by the lower appellate authority as he has not dealt with the question as to whether the impugned goods are parts or accessories of air-conditioning machineries or not but has allowed the exemption merely on reclassification of the goods.

6. In view of our findings as above, we set aside the impugned order and allow the appeals by way of remand with the direction that the lower appellate authority shall specifically determine whether the impugned goods are parts or accessories of air-conditioning machinery or not. He shall also take into consideration the catalogues produced by the respondents and allow them a reasonable opportunity of hearing before passing a fresh order.