L.V. Associates Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-03-2006

Judge : R Abichandani, S T T.V.

Appellant : L.V. Associates

Respondent : Cce

Judgement :

1. This is an appeal filed by L.V. Associates challenging the order of the Commissioner (Appeals) dated 30.8.2005. In this impugned order, the learned Commissioner (Appeals) decided that Fat Liquors would not be eligible for the concessional rate of duty of 10% extended by Notification No. 12/94-CE dated 1.3.1994, as amended. Notification No.12/94-CE extends the benefit for the goods termed as "Lubricating Preparations". The learned Commissioner (Appeals) while denying the said benefit, focused on the construction of the Tariff. Sub-Heading relating to 3403.00 and distinguished two categories of items, viz. (a) lubricating preparations and (b) preparations of a kind used for the oil or grease treatment of textile materials, leather, fur skin and other materials. As regards fat liquors, he observed that the same would seem to fall in the Second category as preparations of a kind used in the oil or grease treatment of Textile, Material leather etc.

as fat liquoring is a process whereby oils are incorporated into leather, so that the leather attains the desired softness. He further observed that the chemical test results of the impugned goods also reveals that they are composed of vegetable fatty oils, organic surface active agents and additives which find use as fat liquoring agent in the leather industry. Thus these fat liquors would not be eligible for the concessional rate of duty of 10% but would be chargeable to the tariff rate of 20%.

2. Being aggrieved with the said order-in-appeal, the appellants have filed this appeal before us.

3. The learned Counsel for the appellants contends mainly on two grounds : firstly, that there their goods can be called as 'Lubricating Preparations in view of the fact that they stand classified under the sub-heading 3403.00 of the Central Excise Tariff; and secondly, being a small scale unit they should not be required to make a pre-deposit following the ratio of the Tribunal's decisions in the case of Commissioner of Central Excise, Chennai v. Balmer Lawrie & Co. Ltd. 2002 (149) ELT 174 (T) and Commissioner of Central Excise v. Chennai Inorganic Ltd. 2002 (150) ELT 552.

3. The learned Authorised Representative of the Department reiterates the ratio contained in the impugned order, contending that while the exemption under the notification would be eligible in respect of the first portion of the entry, the product in question 'Fat Lurbricants' does not quality for the same as it is not a lubricating preparation.

4. We have heard both sides and examined the case records. As regards the product in question, being classified as 'Lubricating Preparations', the appellants have not produced any dependable chemical test reports of their product from any authorized laboratories or persons/experts to prove that what they manufacture falls under the category of lubricating preparations. On the contrary, the respondents seem to have examined the chemical composition of the product and have taken a stand on merits. In view of this, prima facie, it does not appear to be a fit case for total waiver of duty as confirmed in the impugned order. As regards financial difficulties, the learned SDR states that the appellants have failed to furnish any authentic information about their financial heath. Admittedly, it is a running concern. Therefore, having regard to the facts and circumstances of the case, the appellants are directed to make a pre-deposit of a sum of Rs. 4 lakhs (Rupees Four lakhs only) within eight weeks from today, failing which their appeal

will stand dismissed. On the amount being deposited, as directed above, the pre-deposit of the rest of the amount will stand waived till the disposal of the appeal.

5. The matter to come up for reporting compliance and further orders on 13^th March, 2006.