Commissioner of Central Excise Vs. Crystal Lace (i) Ltd.

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SooperKanoon Citation : sooperkanoon.com/41476

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-12-2006

Judge : S T Chittaranjan

Appellant : Commissioner of Central Excise

Respondent : Crystal Lace (i) Ltd.

Judgement :

1. Heard both sides. It is strange that this appeal has been filed under authorization by the applicant Commissioner, Central Excise, Belapur, Shri Premanand Das against the impugned order in appeal passed by no other than himself in his earlier capacity as Commissioner of Central Excise (Appeals), Mumbai. It is not as if he has been directed by any superior authority to file this appeal as was confirmed by the learned S.D.R. Filing of such an appeal as this against his own order clearly indicates that some of the Commissioners in the field are not willing to take responsibility for accepting even their own orders and they perhaps want that every decision to allow relief should be approved at the Tribunal level. Such tendency on the part of the departmental authorities is perhaps the cause of numerous avoidable departmental appeals filed in the Tribunal.

2. The respondents are a 100% EOU who have obtained LDO under CT3 certificate and have used the same in their chilling plant for temperature control. It is argued on behalf of the applicant Commissioner that under the impugned Notification No. 1/95-CE dtd.4.1.1995, under Sr. No. 3(b) and 3(c) to Annexure I, fuel and furnance oil are respectively covered subject to approval of the

Assistant/Deputy Commissioner of Central Excise and since the respondents do not have such approval, they are not entitled to the exemption. It is the claim of the respondents that LDO obtained by them under CT3 is eligible for exemption as consumable under Sr. No. 7 of the said Annexure I to the said Notification No. 1/95. They also contend that they have obtained the material with the full knowledge of the department and the Show Cause Notice issued on 26.2.2003 for the period 6.3.1998 to 27.7.2002 is, therefore, clearly time barred.

3. In view of the fact that the impugned goods are covered under the description 'consumable' appearing under Sr. No. 7 to the Annexure I to the Notification No. 1/95-CE dtd.4.1.95, the respondents are clearly entitled to the exemption under the same. As such, the impugned order passed by the applicant Commissioner in his earlier capacity allowing the benefit of exemption to the respondents is in order and the subsequent appeal filed by the applicant Commissioner against his own order is without any merit. The department's appeal is therefore rejected.