Overseas Engineers Vs. Commissioner of Central Excise

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SooperKanoon Citation : sooperkanoon.com/42191

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-17-2006

Reported in : (2006)(107)ECC474

Judge : A T K.K.

Appellant : Overseas Engineers

Respondent : Commissioner of Central Excise

Judgement :

2. The brief facts of the case are that the applicant is engaged in the manufacture of Diesel Oil Engine and Centrifugal Pump sets falling under Chapter 84 and had intended to avail the benefit of Notification No. 47/94 and had applied for necessary permission before the Assistant Commissioner of Central Excise, Division I, Rajkot, Since the Assistant Commissioner did not act on their application the applicant procured the diesel oil engine on payment of central excise duty for use in manufacture of centrifugal pumps which were to be exported.

Subsequently they filed a refund claim with the Deputy Commissioner of Central Excise. Division-1 for refund of duty paid by them. In view of the exemption provided under Notification No. 47/94 the refund claim was rejected by the Assistant Commissioner on the ground that the applicant is not eligible to work under Notification No. 47/94 and the provision of unjust enrichment was applicable. This order was confirmed by the Commissioner (Appeals). Aggrieved by the Commissioner (Appeals)'s order they filed an appeal in the Tribunal and the matter was listed for personal hearing on 10.01.2005. It was submitted that since the issue under consideration was settled by the Tribunal in their own case, written submissions were filed by them on 30.12.2004 with a request to waive personal attendance.

3. After considering the submissions, Tribunal directed the applicant to produce a typed copy of the order of the Tribunal and the hearing was fixed on 05.05.2005. As per direction a typed copy of the order was submitted to the Tribunal vide their letter dated 30.04.2005. However, they have received the order dated 07.06.2005 by which their appeal is dismissed on the ground that the issue involved relates to the rebate of duty and therefore, the appeal does not lie with the Tribunal.

4. It was submitted that the issue related to the refund of duty and their appeal has been admitted in similar case by Division bench of the Tribunal and in subsequent cases decision have also been passed by the Tribunal admitting their appeal. The matter is essentially of refund and not of rebate and therefore needs to be restored.

5. Heard both parties. I find that the matter relating to sanction of refund in respect of duty paid on inputs used in the manufacture of export products which are otherwise exempted under Notification No.47/94 has been admitted by the Tribunal in their own case vide Order No. C-IV/555, 556/WZB/04 dated 24.12.2003. The matter cannot therefore be treated as that of rebate and is essentially of refund. The appeals are ordered to be restored.