

Kei Indus. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-31-2007

Reported in : (2008)(125)ECC181

Judge : R Abichandani, V T M.

Appellant : Kei Indus. Ltd.

Respondent : Cce

Judgement :

1. The appellant challenges the order dated 19.04.2007 made by the Commissioner (Appeals) upholding the order-in-original by which the adjudicating authority directed recovery of Central Excise Duty of Rs. 59,896/- and imposed penalty of the like amount besides ordering recovery of the interest.

2. The appellant was engaged in the manufacture of wire cables and S.S.wire. It was noticed during the scrutiny of ER-1 Return for May, 2005 that the appellant had cleared 0.686 KME cable valued at Rs. 6,67,010/- claiming exemption under the Notification No. 108/95-CE dated 28.08.1995. As per the said notification, all the goods falling under the schedule to the Tariff Act, when supplied to the United Nations or an international organization for official use or supplied to the project financed by the United Nations or an international organization and approved by the Government of India were exempt from whole of the excise duty and additional excise duty subject to the condition that before clearance of the said goods, the manufacturer produces a certificate before the Asstt. Commissioner/Deputy

Commissioner, received from such organization that the goods are required for the intended purpose.

3. In the present case, the adjudicating authority held that, the assessee did not prove that he had sent a certificate before clearance.

The exemption was, therefore, denied, which order was confirmed by the Commissioner (Appeals).

4. After hearing both the sides and going through the record, it appears that, the appellant had, in fact, obtained certificate dated 17.05.2005 from the World Health Organization, which is an international organization, in which it was certified that, the goods which were to be supplied by the appellant as described therein as per their purchase order dated 17.05.2005, were required for use at the regional office for South-East Asia of the World Health Organization, New Delhi. It is also recorded therein that, exemption of excise duty on the said items (Armoured Cables) was claimed under the provisions of the Notification No. 108/95-CE dated 28.08.1995, as amended by Notification No. 40/99-CE dated 01.11.1999 issued by the Ministry of Finance, Department of Revenue, Government of India. It is also clarified that, the World Health Organization was in the category of international organization as per para (2)(a) of the said Notification dated 28.08.1999, as amended. According to the appellant, the said certificate was sent to the Divisional Office on 19.05.2005 by post Under Postal Certificate (UPC). The UPC which is on record shows that post was dispatched to the Deputy Commissioner Central Excise Division, Bhiwadi, on 19.05.2005. The adjudicating authority refused to rely on the said certificate on the ground that, the UPC did not contain reference to the said communication under which it was forwarded.

Ordinarily, UPC will not contain any particulars showing the nature of communication. It would only show that, some communication is posted to the addressee, as shown in the UPC. It is not the case of the Department that the certificate dated 17.05.12005, which was on record, was not genuine. The certificate was obtained prior to the date of clearance of the goods which was 20.05.2005. On the strength of this certificate, the appellant was entitled to get exemption. The exemption is denied on the ground that, it was not received by the

Commissionerate before the clearance of the goods. Since the certificate was, in fact, obtained and in substance the appellant was entitled to the exemption, mere late receipt of the certificate by the Department should be considered to be a mere procedural lapse with which drastic consequence of denial of exemption need not be attached, keeping in view the injustice that may be called in a genuine case where the certificate is obtained but is not handed over to the Revenue in time for unavoidable reasons. In this context, the learned authorized representative for the Appellant has justifiably placed reliance on the decisions of the Tribunal in the case of reported in Oil India Ltd. v. Collector of Customs and S.K.F Bearings India Ltd. v. Collector of Customs, Bombay reported in 1999 (109) ELT 774 (T), in which, relying upon the substantial compliance theory, mere late production of essentiality certificate was held not to be sufficient for denying the benefit of exemption.

4.1 For the foregoing reasons, the impugned order of the Appellate Commissioner and the adjudication order cannot be sustained and are hereby set-aside. The appeal is accordingly allowed.

(Dictated and pronounced in the open Court on the 31st day of October, 2007)

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