Him Engineers India (P) Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-19-2008

Judge : S Kang, Vice, M T B.S.V.

Appellant : Him Engineers India (P) Ltd.

Respondent : Cce

Judgement :
1. The appellant filed Misc. application for early hearing in Appeal No. E/2340/07. The Misc. application is allowed and the appeal is taken up for hearing.

2. Heard both sides. Appeal No. E/2340/07 is filed against the impugned order whereby the benefit of Notification No. 50/03-CE was denied and the Appeal No. E/208/08 is filed against the order which is in respect of the demand after denying the benefit of notification.

3. Notification No. 50/2003-CE dt. 10.6.03 provides exemption of goods in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 and other than the goods specified in Annexure-I and cleared from a unit located in the Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area from the whole of the excise duty or additional duty of excise provided that the exemption contained in the notification shall apply subject to the following condition: One of the conditions for availing the exemption is that industrial units existing before the 7^th day of January, 2003 but which have undertaken substantial expansion by way of

increase in installed capacity by not less than 25% on or after the 7^th day of January, 2003, but have commenced commercial production from such expanded capacity, not later than the 31^st day of March, 2010.

4. The appellant claimed exemption under the above mentioned condition.

The contention is that the appellant undertaken the substantial expansion by way of increase in installed capacity which is not less than 25% and are entitled for benefit of exemption notification. The contention is that the adjudicating authority passed the ex-parte order without affording reasonable opportunity of hearing to the appellant.

The contention is also that the Commissioner(Appeals) has not taken into consideration the points taken by the appellant to show that they had undertaken the expansion by way of increase in installed capacity which is not less than 25%. The contention of the appellant is that they are having the evidence to show that they had undertaken expansion by way of increase in installed capacity by installing new machines and they have the evidence of purchase of the new plant and machinery.

5. The contention of the revenue is that when the applicants filed declaration for availing the benefit of this notification, the physical verification was done by Range Officer and as per the report of the Range Officer, the machines installed prior to expansion i.e. Hydraulic press and Elgi make air compressor were not found installed and two other machines namely listed spot welding set and Bench grinder had been kept aside as scrap. The contention of the revenue is that the Hydraulic press which was earlier installed in the factory was sold on 6.4.06 and contention of the revenue is that the appellant had not undertaken expansion by way of increase in installed capacity but only replaced the old and used machine. The contention of the revenue is also that the appellants are manufacturing 52 components of tractors whereas as per the appellant, they had increased capacity in respect of one only. The contention of the revenue is that the physical verification report by the Range Officer was not challenged by the appellant before the Commissioner(Appeals), not before this Tribunal in the present appeal. Therefore, the benefit of notification was rightly denied.

6. In this case the appellant claimed the benefit of notification No.50/03-CE which is in respect of the industrial unit in specified area and have undertaken expansion by way of increase in installed capacity by not less than 25% on or after the 7^th March'03. As the appellant claimed the benefit of notification, therefore, onus on the appellant to show that they had undertaken the substantial expansion by way of increase in installed capacity by not les than 25%. The appellant had not produced any evidence before the adjudicating authority in support of their claim. The claim of the appellant was verified by Range Officer and the Range Officer in his report specifically mentioned that old and used machines were replaced with new machines. It is also on record that the appellants are manufacturing 52 parts of components of tractors whereas as per appellant, they had increased the capacity only in respect of one part. Commissioner(Appeals) in the impugned order after noticing the grounds for challenge to Adjudicating Authority dismissed the appeal filed by the appellant. In the present appeal also we find that this verification report was not under challenge nor appellant produced any evidence regarding expansion of the plant. We find that verification report shows that old and used parts were replaced by the appellant and the old machine is simply lying in the factory as a scrap and the appellants were not discharged the onus to show that they had not undertaken the expansion by way of increase in installed capacity by not less than 25% even by replacing old machinery. In absence of such evidence, we find no infirmity in the impugned order whereby the benefit of notification was denied to the appellant.

7. As we are dismissing the appeal whereby the benefit of notification was denied, therefore, the Appeal No. E/208/08 which is in respect of consequential demand, is also dismissed. Stay petition is also dismissed.