

Commissioner of Customs (import) Vs. Nandi Highways Developers Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-02-2008

Judge : M Ravindran, A T K.K.

Appellant : Commissioner of Customs (import)

Respondent : Nandi Highways Developers Ltd.

Judgement :

1. This application for rectification of mistake is filed by the Revenue against the Final Order No. A/385/WZB/2007/CSTB dt.25.5.2007.

3. The bench while disposing of the appeal filed by the Revenue against order-in-appeal No. 67/2005(JNCH) held as under: On an issue like this we feel that the opinion of the Ministry of Surface Transport deserves consideration of the authorities.

Moreover, the respondents have also produced a certificate from Dr.

S. Venkatachalam, Professor of Department of Metallurgical Engineering & Material Science, IIT, Bombay. We are reproducing the said certificate. (Certificate reproduced in order).

According to the procedure the entire assembly is to be considered as stone crushing cone type plant. In these circumstances we do not find any merit in the Revenue's appeal. Hence we dismissed the same and upheld the impugned order.

4. As against the above said order the Revenue's contention in the application for rectification of mistake is that there is an in built contradiction in the order of the Tribunal. It is submitted by the Ld.

JDR that the benefit of Notification No. 20/99 allows exemption to cone type plant while the machinery imported is an integrated machine, which includes cone type plant, and jaw crusher. It was submitted that reading of the order indicates that entire machinery is accorded the benefit of notification No. 20/99, while the Ld. Commissioner (Appeals), has held that only part which is pertaining to cone type crusher will be eligible for benefit of exemption Notification and has rejected the contention of the assessee that the whole machine has to be considered as cone type crusher.

5. The Revenue was in appeal before us in this case. In the appeal memoranda, in their grounds of appeal No. 2 & 3 the following grounds were taken.

The Ministry of Surface Transport has certified only the cone type crushing plant for exemption and not the jaw crushing plant. The Ministry of Surface Transport has therefore certified for exemption only the cone type crushing portion of the mobile crushing plant whereas the imported mobile crushing plant is other than that and includes jaw crushing plant also. The plant under import was therefore neither covered by the certificate issued by Ministry of Surface Transport nor by the said Entry of the exemption Notification.

The said entry in the exemption Notification is restricted to stone crushing cone type plant and does not include in its ambit larger composite and multifunctional plants in which one portion consist of cone type crushing plant, jaw crushing plant has a distinct function and is not a part of the cone crushing plant. However, since the equipment under import is an integrated one, it cannot be assessed separately as jaw crusher and cone type crusher for the reason that these two crushers do not exist separately.

It can be seen from the above reproduced grounds of appeal that the Revenue had challenged the order-in-appeal on two separate grounds one that the integrated machine cannot be called as cone type crushing machine and it does

not includes in its ambit larger composite multifunctional plants which consists of cone type crushing plant and jaw crushing plant. During the proceedings the arguments were in this direction only i.e. that benefit of notification cannot be accorded to the respondent. It is seen from the record that this contention of the Revenue is negated by us in or order dt. 25.7.2007. It is to be noticed that the entire appeal of the Revenue has been dismissed by us while holding that the integrated machine is eligible for exemption notification relying upon the certificate given by the Ministry of Surface Transport. The challenge of the revenue centered around non-eligibility of benefit of notification, due to the reason that certificate issued by Ministry of Surface transport was only for cone type crusher plant. We found that the subsequent certificate given by Ministry of Surface Transport, supplemented by a certificate from an expert will have impact and held that there is no merits in revenue's appeal. There is no mistake in the order, as the Revenue's grounds of appeal against the impugned order was challenging the granting benefit of notification only on the ground that imported machinery is not a cone type crusher. Though we may be of the opinion that the benefit of notification is available to the entire plant and machinery, since there is no appeal or cross objection by the respondent against the impugned order, holding part of the machinery is not eligible for benefit of notification, we upheld impugned order, that partly granted benefit of notification to the respondent.

In view of the forgoing reasons we do not find any merits in this application and dismiss the same.

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