Hayvolt Electricals Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-05-1990

Reported in : (1991)(52)ELT107TriDel

Appellant : Hayvolt Electricals

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order of the Collector (Appeals), New Delhi.

2. The learned Counsel stated that they had filed a refund claim on the basis of Notification No. 80/80 dated 18-6-80. However, the Assistant Collector rejected the claim on the ground that they had not filed a declaration as required under the said notification. The learned Collector (Appeals) also took the view that a notification was required to be construed strictly in the light of the Tribunal's order cited by him and confirmed the order of the Assistant Collector.

3. It was their submission that in this case at the beginning of the year they had secured an order worth Rs.24,37,000/- from U.P.Electricity Board. Hence they did not file the declaration.

Subsequently, however, their total value of clearances did not exceed the prescribed limit by Rs.15 lakhs. Hence they filed the refund claim.

4. At this stage a question arose whether the matter falls within the jurisdiction of the Regional Bench. The learned Counsel stated that such matters have already

been decided by the North Regional Bench and in this connection he would draw attention to the order of the North Regional Bench in the case of Hitnachal Air Products reported in 1988 (11) ETR 205. In this case it has been held that the refund claim could not be denied on the ground that the appellant did not make any declaration for availing the benefit of Notification No. 80/80-CE.5. He also further stated that it is well settled now that even if the benefit of the notification is not claimed in a classification list but its conditions are satisfied the assessees were entitled to the prescribed exemption as was held by the South Regional Bench in case of Mysore Acetate and Chemicals Co. reported in 1990 (47) ELT 687.

6. He stated that they had filed a refund claim within the prescribed time limit wherein they had clearly mentioned that they had not crossed the exemption limit and this fact has also been taken note of by the Assistant Collector in the order-in-original while narrating the facts of the case.

7. The learned S.D.R. stated that the orders of the Collector (Appeals) was required to be upheld as the Assistant Collector was correct in his finding that no declaration has been filed as required under the notification.

8. It was also his submission that since a question of application of notification was required it may also be considered whether this Bench had jurisdiction in the matter. He would also like to emphasise and reiterates that the learned Collector (Appeals) had rightly cited and relied upon the Tribunal's order in the case of Batliboy & Co. reported in 1987 (32) ELT 118 in accordance with which it is the accepted legal position that a notification should be construed strictly.

9. In this case since they had admittedly not filed the declaration they are not entitled to the benefit of the exemption notification.

10. We observe that first and foremost we have to address ourselves to the points of jurisdiction raised by the learned SDR. In this connection we note that in terms of Section 35(D) those cases are required to be heard by Special Benches which involve, inter alia, a question having a relation to the rate of duty of excise or to the value of the goods for the purposes of assessment. This section does not refer to

notifications and therefore merely because a notification is cited or invoked it does not mean that the jurisdiction lies with the Special Benches. As a matter of fact various types of notifications are issued under the Central Excise Act and all of them do not necessarily have a bearing on the rate of duty or valuation.

11. In the instant case Notification No. 80/80 has been cited and relied upon. It is undoubtedly an exemption notification. However the question before us is not that of determination of the rate of duty but a more limited one of the procedure required to be followed in order to avail the benefit of this notification; [and whether the refund claim could be allowed in the circumstances of the case]. In other words the Bench was not required to give a finding as to the effective rate of duty applicable was merely called upon to decide the question of procedure limited to determining the effect of filing or not filing the required declaration.

12. Our attention has been drawn in this connection to an order of the North Regional Bench itself passed in the case of Himachal Air Products Limited reported in 1988 (11) ETR 205 in which an identical issue has been determined by this very Bench with reference to Notification No.83/83. In fact the ratio of this order squarely covers the present case.

13. In the instant case a declaration was undoubtedly required to be filed in the normal course in terms of the language of the Notification 80/80. Admittedly no such declaration was filed initially as the appellant had no reason to believe that their production would not exceed prescribed limit in view of a large order in hand. Subsequently however it did not actually exceed the limit prescribed under the aforesaid notification. The question which has arisen therefore is whether in view of these facts and circumstances the benefit of notification could be allowed or was required to be denied to them.

In this connection we notice that in the aforesaid case of Himachal Air Products the North Regional Bench has observed inter alia that "The adjudicating authority's contention for denying the refund totally to the appellant on the ground that it did not make any declaration which is a necessary condition for availing of the benefit of said notification is not tenable. That such a declaration can only be on the basis of an estimate of the production and clearance of the excisable goods likely to be made in the financial year. That estimate may or may not get actually fulfilled depending upon various contingencies.

Intention of the notification is clearly to give the benefit of exemption to a new manufacturer whose clearances of the specified goods do not exceed Rs.7.5 lakhs in the financial year." 14. Even otherwise it is well settled that merely for a minor procedural infraction, the substantive benefit, if otherwise due, should not be denied in the interest of justice.

15. As a matter of fact it has been held by this Tribunal in the case of Mysore Acetate Company Limited reported in 1990 (47) ELT 687 that even in case of a classification list finally approved without specific claim for benefit of notification made therein, the refund could be granted if the application was otherwise in time.

16. The case cited by the learned SDR namely that of Batliboi and Company reported in 1987 (32) ELT 118 is distinguishable for in that case the main question was the categorisation of the machine in question, and as to whether it could be considered a boring machine of the type covered by the notification and it was in this context that the Bench had observed that the meaning of the words of the notification has to be construed strictly.

This case in other words does not deal with the issue or the aspects with which we are concerned in the present case.

17. The instant case on the other hand is of on all fours, with the case of Himachal Air Products (Supra) decided by this very Bench in so far as the limited question of effect of non-declaration in the given circumstances was concerned. Hence following the ratio thereof we accept the appeal as already announced in the open Court.