

Mysore Cork Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Apr-12-1991

Reported in : (1991)(56)ELT160Tri(Chennai)

Appellant : Mysore Cork Industries

Respondent : Collector of Central Excise

Judgement :

1. The matter had come up for hearing earlier when the Tribunal had directed the same to be transferred to the Special Bench, as it appeared that interpretation of Notification 213/86 would fall for consideration.
2. The learned Advocate has filed this Miscellaneous Application pleading that the issue involved in the appeal relates to the availability of the benefit of Notification 175/86 and, therefore, falls within the jurisdiction of this Bench and prays for recalling the order transferring the appeal to the Special Bench.
3. Accordingly, the order is hereby recalled and the appeal is taken up for disposal.
4. The learned Advocate for the appellants pleaded that the appellants had proceeded to avail of the benefit of Notification 175/86 after the issue of the same on 1-3-1986 and after filing the necessary classification list and also after approval thereof by the competent authority. He has pleaded that the operation of this Notification, however, was suspended for a limited period of 7 days by the issue of

Notification 202/86 with effect from 25-3-1986 till 31-3-1986. He pleaded that simultaneously with the issue of Notification 202/86 the Government of India issued another Notification 213/86 extending the benefit in respect of small scale manufacturers in terms of the said Notification and this Notification also was operative for the period 25-3-1986 to 31-3-1986. He has pleaded that so far as the payment of duty for the period 25-3-1986 to 31-3-1986 is concerned the appellants are bound to pay in terms of Notification 213/86 and the appellants have in fact agreed to do that. The lower authorities have, however, proceeded to demand duty for the entire month of March i.e. till 31-3-1986 holding that the benefit of Notification 175/86 was not available to the appellants consequent on the issue of Notification 213/86 read with the Central Duties of Excise (Retrospective Exemption) Act, 1986. The learned Advocate pleaded that the authorities held the view on account of the Central Duties of Excise (Retrospective Exemption) Act, 1986 that the Notification 213/86 would apply to the whole of the month of March, 1986 and the benefit of Notification 175/86 would also not be available with effect from 1-3-1986. The learned Advocate for the appellants pleaded that the Notification 175/86 was suspended for only a limited period i.e. from 25-3-1986 to 31-3-1986 and there is no warrant in holding that this Notification was not operative for the period prior to 25-3-1986, as the same statutorily was in force and the authorities were bound to give effect to the same. He has pleaded that in that view of the matter the Department's view that the Central Duties of Excise (Retrospective Exemption) Act, 1986 would apply even during the currency of the Notification 175/86 is not maintainable.

5. The learned SDR for the Department pleaded that the Central Duties of Excise (Retrospective Exemption) Act was enacted for the specific purpose to maintain the rates of duty uniformly during the period of March, 1986 and to sort out the confusion that was created on account of two Notifications viz. 175/86 and 213/86 being operative during the different parts of March, 1986. He has pleaded that the purpose of issue of the Central Duties of Excise (Retrospective Exemption) Act was to maintain the rate of duty at the level as was existing upto 28-2-1986 by the issue of notifications between March and August, 1986.

He has pleaded that since the intention was to maintain a uniform rate of duty during March, 1986 corresponding to the duties as were leviable upto 28-2-1986, the Notification 175/86, therefore, could not be given effect to as pleaded by the learned Advocate. He in this connection drew our attention to Clause (b) of Sub-section (1) of Section 2 of the Central Duties of Excise (Retrospective Exemption) Act, 1986, which for convenience of reference is reproduced below: "Every notification issued by the Government of India in the Ministry of Finance (Department of Revenue) on or after the 3rd day of March, 1986, but before the 8th day of August, 1986, in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, for the purpose of, - (b) maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to 1st day of March, 1986 notwithstanding the changes in the rates of duties of excise made by the Finance Bill, 1986, shall, in so far as such notification relates to such goods, be deemed to have, and to have always had, effect on and from the 1st day of March, 1986." 6. The learned Advocate for the appellants brought to our notice the following Instructions of the Government of India (F.No.V930)/35/Gen/86) contained in Bom-bay-I Trade Notice No. 22(MP) & (UMP) General/86 dated 27-3-1986 : "4.10. Restoration of exemptions to Small Scale Industrial Units.

Attention of the Trade is invited to Notification Nos. 203/86-C.E. to 214/86-C.E. all dated 25-3-1986 issued by the Government of India, Ministry of Finance (Department of Revenue) under which certain exemptions earlier available to Small Scale Industrial Units have been restored. Simultaneously, the operation of Notification No. 175/86-C.E., dated 1-3-1986 has been suspended by Notification No. 202/86-C.E., dated 25-3-1986. All these Notifications will be in force only for a limited period of 7 days commencing from 25-3-1986 to 31-3-1986 (both the dates inclusive). The effect of these notifications is as under : The operation of Notification No. 175/86-C.E., dated 1-3-1986 has been suspended temporarily for a limited period from 25-3-1986 to 31-3-1986 (both days inclusive) by issue of Notification No. 202/86-C.E., dated 25-3-1986.

As such, those manufacturers who have started availing of the exemption under Notification No. 175/86-C.E., dated 1-3-1986 with effect from 1-3-1986 in respect

of their products, will not be able to avail of the same for the period from 25-3-1986 to 31-3-1986.

However, such manufacturers can avail of the exemption, as provided under Notification Nos. 203/86-C.E. to 213/86-C.E. all dated 25-3-1986 during the period from 25-3-1986 to 31-3-1986 provided they fulfil the conditions prescribed under these Notifications." 7. We have carefully considered the submissions of both the sides. We observe that it is not denied that Notification 175/86 was in force upto 25-3-1986 and its operation was suspended only for a period of one week from 25-3-1986 to 31-3-1986 and during that period another Notification purported to give exemption to small scale units i.e.

Notification 213/86 came into force. The Revenue has sought to deny the appellants the benefit of Notification 175/86 on the plea that by virtue of issue of Notification 213/86 and read with the provisions of Central Duties of Excise (Retrospective Exemption) Act, 1986, this Notification 213/86 will have an overriding effect over the Notification 175/86. Needless to say that a statutory Notification has been issued and it has the force of the law and the effect of the same cannot be nullified unless it is expressly provided in another Notification. In the present case the suspension of the Notification 175/86 by issue of Notification 202/86 was only for a period of one week and no more. Notification 175/86, therefore, had the statutory force and the same, therefore, had to be given effect to in case the appellants were otherwise eligible for the benefit of the same. We fail to see as to how a notification issued for a limited period of one week for whatever reason can be given effect to retrospectively. Obviously, what the authorities intended was to restrict the benefit of exemption in terms of Notification 213/86 for a limited period of one week when the operation of Notification 175/86 was suspended. We are not called upon to go into the aspect as to why this was done. The fact remains that the suspension period alone is relevant for the purpose of consideration as to whether the benefit of Notification 175/86 was not available to them. So far as the application of Central Duties of Excise (Retrospective Exemption) Act was concerned, the application of the said Act was in respect of certain goods. Nothing has been shown to us that the said goods in respect of which the benefit was sought to be given in terms of Notification 213/86

was sought to be restored to the level as it existed in respect of the very same goods upto 28-2-1986.

In any view of the matter we hold that the demand made upto the period 24-3-1986 is not maintainable. We, therefore, allow the appellants' appeal in the above terms.

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