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Collector of Central Excise Vs. Vipul Shipyard

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-1991

Reported in : (2000)(117)ELT616TriDel

Appellant : Collector of Central Excise

Respondent : Vipul Shipyard

Judgement :

1. The question involved in this appeal is whether the vessels/ships manufactured by the respondents herein are covered by the expression "Ocean Going Vessels" falling under Tariff Item 68 which are exempted under Notification No. 102/80, dated 19-6-1980 amending the Notification No. 55/75, dated 1-3-1975. Subsequently another Notification No. 104/82, dated 28-2-1982 was issued superseding the earlier Notification No. 55/75, dated 1-3-1975. S. No. 33 in the schedules to the said Notification No. 104/82 again exempted "Ocean Going Vessels" from excise duty. The lower appellate authority has held that the "Barges" manufactured by the respondents herein are covered by the aforesaid expression "Ocean Going Vessels" exempted under the said notifications.

2. It is fairly conceded by the learned JDR for the appellant-collector that the judgment of the Tribunal Nos. 541 to 544/84B [1985 (19) E.L.T.122 (Tri.)]in the case of the respondents themselves, namely, Vipul Shipyard, Bombay v. C.C.E., Bombay decides the matter in favour of the assessee i.e. the respondents herein, treating the "Barges manufactured by them as "Ocean Going Vessels" exempted under the said notifications.

He, however, submits that in a subsequent judgment of Supreme Court in the case of Chowgule & Co. Pvt. Ltd. and Anr. v. U.O.I. and Onr. [1987 (28) E.L.T. 39 (S.C.)], a question came up as to what is meant by the expression "Ocean Going Vessels" and he has submitted that the Supreme Court came to the conclusion that the vessels primarily meant for use in inland navigation cannot be treated as "Ocean Going Vessels" and in that view of things, it was directed by the Supreme Court that the importer therein should file a bill of entry for home consumption for clearance of the said vessels. He submits that here also it is not disputed that the vessels under consideration are primarily intended for inland navigation for the purpose of transporting ores from the mines to other places. Therefore, he submits that applying the subsequent judgment of Supreme Court the earlier decision of the Tribunal should be reversed and a fresh view be taken in this case.

2. He has further submitted that so far as the earlier decision of the Tribunal is concerned, the department has not accepted the said decision of the Tribunal and appeals have been filed in the Supreme Court by the department. Decision of the Supreme Court is, however, awaited.

3. Shri Rohan Shah, learned advocate for the respondents, contends that the judgment of the Tribunal which is directly on the point regarding the exemption notification under consideration, is applicable in the present cases. The earlier judgment of the Tribunal was also in the matters relating to the respondents herein. So far as the reliance placed by learned JDR on Supreme Court's judgment in Chowgule & Co.'s case, mentioned supra, is concerned, he submits that the controversy before the Apex Court was entirely different and the expression "Ocean Going Vessels" occurring in the aforesaid notifications was never before the said Court. Therefore, the ratio of Chowgule & Co.'s case cannot be applied here.

4. We have carefully considered the pleas advanced from both sides. We agree with the learned advocate for the respondents that the judgment of the Supreme Court in Chowgule & Co.'s case has no application in the present facts circumstances. In view of the Tribunals' earlier judgment Nos. 541-544/84-B, dated 16-7-1984, we dismiss this appeal.

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