

Dutta Engineering Works Vs. Collector of C. Excise

Dutta Engineering Works Vs. Collector of C. Excise

SooperKanoon Citation : sooperkanoon.com/7480

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-18-1994

Reported in : (1994)(72)ELT311TriDel

Appellant : Dutta Engineering Works

Respondent : Collector of C. Excise

Judgement :

1. The appellant has challenged the order in appeal passed by Collector (Appeals), New Delhi by his order dated 25-5-1988.

(i) The appellants were issued with two show-cause notices. By show-cause notice dated 7-10-1982, it was alleged that the appellants had exceeded Rs. 30 lakh clearances during the year 1981-82 and as such were not entitled for exemption under the Notification No. 105/80, dated 19-6-1980 as amended during the financial year 1982-83. As such duty amount of Rs. 52,015.76 was demanded on the respective clearances made as per G.P. 1 No. 4, dated 2-6-1982; G.P. 1 No. 5, dated 13-6-1982 and G.P. 1 No. 6, dated 2-7-1982.

(ii) By show cause-notice dated 30-6-1982, it was alleged that they had exceeded the first clearances of Rs. 30 lakhs during the financial year 1981-82 in terms of Notification No. 105/80, dated 19-6-1980 as amended, by Rs. 5,32,609/- in excess of the said limit and hence CED of Rs. 42,608.72 was demanded for the respective clearances made through G.P. 1 No. 10 dated 1-12-1981, 19 dated 1-12-1981, 20 dated 1-12-1981, 21 dated 22-3-1982, 22 dated 30-3-1982, and 23

dated 31-3-1982.

3. The appellant filed their respective reply to the said show-cause notice. They submitted that G.P. 1 to 18, and goods under G.P. 1/2 to 6 were cleared for export either by them as manufacturer exporter or by other concerns, as merchant exporters. It was submitted by them that goods cleared under G.P. 1/2 were partly returned to the factory because of shipping difficulties for which D-3 intimation was duly sent to the department while the other four consignments were exported under certificate of export given by the Customs Officer at the Port of export on the shipping bill supported by ST-49, which is the relevant Sales Tax Form exclusively meant for export goods. The value of these goods would work out to Rs. 8,65,5477- and it was required to be deducted from the clearances of home consumption for the year 1981-82 and 1982-83. Several other pleas were also raised by the appellants regarding the eligibility of the benefit of the notification.

4. The Assistant Collector by his order-in-original dated 6-2-1984 rejected their pleas and confirmed the documents. The Id. Asstt.

Collector had held that they had not followed the procedures and hence were not entitled for deduction of export clearances. On appeal, the Collector (Appeals) by his order in appeal dated 9th August, 1984 allowed the appeal by remand and held that it was not proper on the part of the Asstt. Collector to have rejected outright the contentions of the appellants that goods had been exported, merely because AR-4A had not been filed. In that event of the matter, the Id. Collector (Appeals) remanded the case with a direction to consider afresh in the light of the collateral evidence produced by the appellants about the export and decide the case afresh.

5. On remand the Asstt. Collector by his order dated 7-12-1984 again rejected the plea of the appellants, despite accepting the evidence of export, on the ground that he did not find any evidence, whatsoever, which can prove beyond doubt, that the goods which were cleared from the factory were the same, which were actually exported outside the country. In that event of the matter, he confirmed the duty demand of Rs. 1,22,494.00 and the refund claimed by the appellant of Rs. 1,54,787.00 was rejected in full.

6. The appellant filed the appeal for the second appeal. The Collector (Appeal) by his order held that Asstt. Collector had not arrived at any finding in regard to the documents produced by appellant, and as to how these documents were not sufficient evidence of export. Hence, he again remanded the matter. Thus the matter was remanded for the second time to the Asstt. Collector.

7. The Asstt. Collector by her order dated 20-1-1987 again rejected the claim of appellant and confirmed the duty on the ground that the AR 4/AR 4A's had not been filed well in advance and "it was not convincing that the goods under reference were actually exported". On appeal the Id. Collector, by the impugned order has held that they had not produced conclusive evidence to show that the said exports did actually take place and that the bills and invoices produced by them do not establish 'exports' within the meaning of the relevant law and that there is no room to presume the said export. Hence, the present appeal by the appellants.

8. We have heard Shri D.N. Mehta, Id. Advocate for the appellants and Shri S.K. Sharma, Id. JDR for the revenue.

9. Shri D.N. Mehta, Id. Advocate argued very vehemently and demonstrated that the department were browbeating the issue and were deliberately not considering the case despite the matter having been remanded twice by two Collectors (Appeals). The subject matter of first remand had been only to accept the collateral evidence. The Asstt.

Collector had accepted the export of the goods but had held that there remained a doubt pertaining to its veracity. The Collector (Appeals) again remanded on a limited ground to accept export documents after verification. The Asstt. Collector for the first time had deviated from the remand orders and had held that it could not be done so in absence of AR 4s. The Id. Advocate took us through the entire evidence, shipping bills, invoices and other documents under the Customs Act and Sales Tax Act and was able to co-relate and point out to precision about the manufacture and export of the goods under the said GP Is referred in the show-cause notice. He submitted that the dispute pertains only to three consignments and that the evidence referred to by him was conclusive in nature and there was

no doubt left at all with regard to the manufacture and export of the said goods. He also relied on Trade Notice No. 33/MP/Gen/4/81, dated 24-2-1981 in support of his arguments. He also relied on the rulings rendered in the case of *M/s. International Minelmech (P) Ltd. v. Collector of Central Excise, Meerut* and *M/s. R.C. Edwards & Co. Pvt. Ltd., Bombay v. Collector of Central Excise, Bombay* 10. Ld. JDR went through all the documents and after scrutiny of the same in our presence reiterated the findings of the authorities.

However, he could not place any fresh arguments or contest with regard to the export of the goods exported by the appellants in respect of the disputed consignments.

11. We have carefully considered the pleas made by both the sides and have perused the documents. The dispute pertains only to three consignments. In respect of the same, the appellant has produced conclusive evidence with regard to its manufacture and its export. The lower original authorities have been refusing to consider the case of the appellants despite being remanded by the Collector (Appeals) on two occasions. The Collector (Appeals) had given a specific finding that the collateral evidence of export produced by the appellants should be considered. In the first instance on remand, the Asstt. Collector held that there was an export and the documents had to be presented. However, he came to the conclusion that the export might not be pertaining to the goods manufactured by the appellants. On appeal, the Collector held that the Asstt. Collector had failed to co-relate the documents and give any findings and therefore, remand the same for the second time.

On remand, the Asstt. Collector has again refused to consider the case and has held that they had not followed the procedure by filing AR 4 at the time of clearance and hence they are not entitled for the benefit of the notification in question. As can be seen from the order of the lower authorities, they were refusing to look into the matter and even co-relate the documents. It is very clear that they are fully convinced about the export of the goods manufactured by the appellants.

It is very clear that they want to deny the benefit and confirm the demand. The Counsel had produced before us the trade circular in this regard and also several rulings. The documents pertaining to the export of the goods manufactured in the said GPs were also shown and it was co-related in our presence. It is fully established before us about the manufacture and export of the goods in respect of the consignments disputed by the depts. Therefore, it is very clear that the original authorities had somehow made up their mind to deny the benefit. We are constrained to observe that this manner of disposal of the case will not meet the ends of justice and such attitude towards the manufacturers should be avoided in the interest of smooth administration. The matter having been remanded twice with specific direction by the Collector (Appeals) should have been adhered to and followed. Unfortunately, the Asstt. Collector had not been following the directions given in the remand. We have considered the pleas of the appellants and have also seen the documents and we are fully satisfied that the appellants have manufactured and exported the goods pertaining to the GPs, and consignments in dispute. In that event of the matter, we allow the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com