

Union Technology International Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-17-1995

Reported in : (1995)(81)ELT671TriDel

Appellant : Union Technology International

Respondent : C.C.E.

Judgement :

1. These are applications for dispensing with the pre-deposit of duty demand Rs. 2,89,427/- and Rs. 6,279/-. The learned Counsel for the applicants Shri Rajesh Chhibber submitted that the demand has been raised holding that the second unit of the applicants manufacturer of cranes and sub-assembly is not eligible for the Small Scale Industries exemption Notification No. 175/86 because the second unit was not registered with the Development Commissioner for Small Scale Industries. The learned Counsel submitted that the first unit is duly registered but the Department is denying the exemption on the grounds that the second unit where they carried out certain operation, is a separate unit and should be in possession of separate SSI Certificate.

Shri Chhibber, the learned Counsel submitted that the Department at the same time has approved all the classification lists 1987-88 granting the exemption on the basis of their declaration in the classification list wherein they have correctly brought out that both units belongs to them. Having done so, the learned Counsel urged that the Department cannot deny them the benefit of the exemption in the subsequent years.

The learned Counsel in this context, relied upon the Tribunal decision in the case of Accura Industries v. Collector of Central Excise, reported in 1992 (58) E.L.T. 98 (Tribunal). The learned Counsel further submitted that they have also since obtained endorsement of their SSI Certificate on the second unit. Shri Somesh Arora, the learned Departmental Representative submitted that the mere fact that the classification in the earlier orders have been approved extending benefit of the notification incorrectly, will not be a bar to the Department, taking the correct stand later, as regards the eligibility of the applicants to the exemption notification based on the condition therein, it is admitted that during the relevant period, the second unit of the applicants did not possess any SSI Registration Certificate. The learned Departmental Representative relied upon the case law reported in 1994 (71) E.L.T. 514 (Tribunal) in the case of Diamond Cement v. Collector of Central Excise, Indore to say that separate permits requires separate Registration Certificate.

2. We have carefully considered the submissions made by both the sides.

We find that the issue relates to the eligibility of the applicants in their manufacture activities carried on in the second unit for exemption under Notification No. 175/86. In this context, the fact for the classification list for 1987-88 giving the particulars of both the units and the interest in their second unit, having been scrutinised and duly approved by the Department, there is prima facie force in the reliance placed the learned Counsel in the Tribunal decision in the Accura Industries case (supra). It may also be of some relevance having regard to the subsequent endorsement obtained by the applicants, in their SSI Certificate covering both the units. In these circumstances, we are inclined to hold that this will be a fit case for dispensing with the pre-deposit as the applicants appeared to have prima facie case on merits and we further noted that the applicants have a case prima facie even in respect of limitation because we note that the demand is for a period beyond six months in both the cases, and prima facie it does not appear a strong case to establishing suppression of facts by the applicants. Accordingly, we grant waiver of pre-deposit and grant stay of recovery.