

Transformers and Electricals Vs. Collr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-09-1995

Reported in : (1995)(78)ELT682TriDel

Appellant : Transformers and Electricals

Respondent : Collr. of Cus.

Judgement :

The appellants imported a consignment of transformer press board and cleared the same on payment of duty vide Bill of Entry 416/29-6-1990 XD/28, dated 17-7-1990. They filed a refund claim on the ground that the goods are eligible for concessional rate of duty as per Notification 20/88 on the strength of DGTD certificate produced by them. The claim for refund was rejected on the ground that the appellants did not satisfy the conditions laid down under Notification 20/88 at the time of clearance as they did not produce the DGTD certificate at the time of clearance and they did not produce any evidence to show that the duty incidence had not been passed on to any other person as required under the rules.

2. The appeal against the Assistant Commissioner's order was rejected by the Collector of Customs & Central Excise (Appeals), Cochin in the impugned order dated 21-10-1992 who held that the conditions of production of DGTD Certificate, giving undertaking regarding end-use of imported material and for paying differential duty in case of failure to do so, are all mandatory conditions to be satisfied at the time of clearance of the goods. The Collector (Appeals) wondered why the appellants at the time of clearance did not even indicate that they would

be claiming the exemption under Notification 20/88. He rejected the appeal.

3. Ld. Counsel, Sh. Joseph Kodianthara for the appellants submitted that though the DGTD Certificate had been received about the time of clearance, they could not forward it in time to their Customs House Agents to claim the exemption and the goods had been cleared on payment of full duty. They had duly enclosed the DGTD Certificate with their refund claim and the Id. Counsel, further, contended that the stand of the Collector (Appeals) that in the circumstances, end-use of the material was in dispute, is not well founded because the appellants had been granted Modvat credit of the additional duty of Customs (CVD) paid on the imported goods as an input in the manufacture of transformers.

Hence, user was never in question according to the appellants. The Id.Counsel further urged that the reliance placed by the Collector (Appeals) on the Supreme Court decision in the case of Indian Aluminium Co. v. Thane Municipal Corporation -1991 (51) E.L.T. 454 to say that the non-observance of even procedural condition cannot be condoned is misplaced. In this case the Id. Counsel pleaded the substantive condition for the exemption, namely, the use of the goods in manufacture of transformers stands established and is also backed up by the DGTD Certificate. The Id. Counsel in this context cited and relied upon the Supreme Court judgment in the case of Mangalore Chemicals & Fertilizers v. Deputy Commissioner -1991 (55) E.L.T. 437.

4. Ld. D.R., Sh. J.P. Singh, pointed out that the Notification 20/88 is one which grants conditional exemption and prescribes three conditions.

The Collector (Appeals) has correctly emphasised the requirement of fulfilment of all the three conditions at the time of clearance as being mandatory requirement for eligibility thereto. The exemption is both for basic and additional duty of Customs (CVD). Hence, the D.R.argued, the appellants do not have this option to pay basic duty and claim modvat on CVD. As has been rightly pointed out by Collector (Appeals), verification of claim for exemption at the relevant time of import, is a requirement and in this case at the time of clearance, the appellants never disclosed their intention to claim the exemption or that the DGTD Certificate had been applied for. In the circumstances, Collector (Appeals), the D.R. urged,

has rightly applied the ratio of the Supreme Court decision in the case of Indian Aluminium Co. (supra).

5. The submissions made by both the sides have been carefully considered. The conditions to be satisfied for eligibility to exemption under Notification 20/88 as already noted in the impugned order are as follows :- "They should produce a certificate from the Director General, Technical Development in each case that the goods are for use in the specified industry and the DGTD should indicate the quantity in each case.

The importer should furnish an undertaking that the imported goods are used for the specified purpose.

The importer should pay the difference in duty if they fail to use the goods for the specified purpose." 6. The DGTD Certificate dated 29-6-1990 produced alongwith refund claim has certified that the goods imported Kraft Paper Board (Press Board) among other materials certified therein is required for the manufacture of power transformers and that the appellant is an actual user. The quantity required has also been certified. This Certificate given specifically in the context of Notification 20/88, was admittedly in existence at the time of import. The use of the material as an input for the manufacture of transformers would be further confirmed by the grant of Modvat Credit of the additional duty of Customs (CVD), by the Central Excise authorities which fact had been taken into consideration and indicated by the appellants in quantifying the refund in the application. When thus the main and substantial condition is shown to have been satisfied, it is not necessary to insist on compliance with the other conditions which are clearly of procedural nature. This is a well-settled position and in this context the Supreme Court decision in the case of Mangalore Chemicals & Fertilizers v. Deputy Commissioner -1991 (55) E.L.T. 437 cited by the Id. Counsel is apposite rather than the Supreme Court decision in the case of Indian Aluminium Co. v. Thane Municipal Corporation -1991 (55) E.L.T. 454 relied upon by the Collector (Appeals) in the impugned order. In the Mangalore Chemicals case (supra), the Supreme Court has observed "that the nature of a condition in an exemption notification, has to be considered, to see whether the condition was a substantive one and one

fundamental to the policy underlying the exemption. "Its stringency and mandatory nature", the Supreme Court held, "must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve." In the present case, the substantive condition is that the press boards should be shown to have been imported for use in the manufacture of transformers. The undertaking designed to be given by the importer is to ensure that the imported material is in fact put to such use and to provide for reversal of the concession if it is not so used. Clearly these are procedural conditions which can be waived when there is evidence as noted above in this case to show that the substantive condition fundamental to the policy underlying the exemption is satisfied. The Supreme Court in the same decision in the case of Mangalore Chemicals (supra), has referred to another judgment of the Supreme Court in the case of Union of India v. Wood Papers - 1991 JT (1) 155 saying, "When the question is whether a subject falls in the notification or in the exemption clause, then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability or doubt about applicability is lifted and the subject falls in the notification, then full play should be given to it and it calls for a wider and liberal construction...". Applying this criterion also to the present case as the material imported admittedly is used in manufacture of transformers the subject falls within the ambit of the notification, thus calling for a wider and liberal construction thereof to extend the exemption to the goods imported. In the result, the impugned order is set aside and it is held that the press board imported is eligible for exemption under Notification 20/88. The appellants would be entitled to relief as per law on their satisfying the Assistant Commissioner of Customs on the aspect of whether the duty incidence has been borne by them "or has been passed on to their customers which aspect though raised in the Assistant Commissioner's order, has not been dealt with in the order of the lower appellate authority. Such relief will also be subject to Modvat Credit already availed. The appeal is disposed of in the above terms.

