Fertilisers and Chemicals, Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-16-1995

Reported in : (1996)(85)ELT395TriDel

Appellant : Fertilisers and Chemicals,

Respondent : C.C.

Judgement :
1. M/s. Fertilisers and Chemicals, Travancore Limited filed a claim for refund of duty paid on a consignment of stainless steel plates imported by it in August, 1982. The basis for the claim was that the company, through its engineering division, fabricated machinery from these plates for use in its fertiliser plant, and the goods were therefore eligible for the benefit of Notification 150/81-Cus. The claims were rejected by the Assistant Collector of Customs and the Collector of Customs (Appeals) on the ground that the conditions of the notification had not been complied with. The company has now come in appeal before us.

2. Shri J.B. Koshy, Advocate for the appellant company, after satisfying the Bench that clearance had been received from the Committee of Secretaries constituted by the Cabinet Secretariat to pursue the appeal, argued the case. He said that the conditions in the notification which the lower authorities found had not been complied with were that the machinery manufactured from the imported goods must be sold to a industrial unit for its use and that for such sale payment must be received through a bank. He said it was evident that the intention of the notification was that where the machinery manufactured out of the imported raw material is

sold it must to sold to a industrial unit in its use, and payment must be made in the manner prescribed in the notification. It was obviously not the intention of the legislature that the notification would only apply if the goods were sold. He cited an order of this Tribunal in the appellant's own case No. C/434/90-B2, dated 14-9-1990 by which the finding of the Collector (Appeals) that the benefit of the notification would be applicable to the appellant when it manufactured the machinery for its own use was affirmed. He also relied upon the judgment of the Supreme Court in Novopan India Ltd. v. Collector of Central Excise - 1994 (73) E.L.T. 769. He argued that subsequently the notification had been amended making the position clear and extending the benefit to a person who manufactured the machinery for his own use. This amendment was in the nature of a clarification which would apply to imports made prior to issue of the second notification .

3. Shri Somesh Arora, the Departmental Representative argued that subsequent to the order of the Tribunal relied upon by the Advocate, the Supreme Court in its judgment in Bombay Oil Industries v. Union of India 1995 {77) E.L.T. 32 had declared that even whether an error in the notification was corrected by issue of subsequent notification, the benefit of the correction introduced by the later notification would not be available to imports which were made before its issue.

4. Notification 150/81-Cus., dated 25-5-1981, in the form in which it stood on the date of importation of the goods by the appellant exempted them from the duty to the extent specified in the table to it. The proviso to the notification read as follows : 'Provided that if the goods specified in column (2) against SL. No. 1 of the said Table are imported for the manufacture of all or any of the articles specified in the corresponding entry in column (3) thereof, the importer or the manufacturer, as the case may be, shall :- (a) carry out the manufacturing operations under the supervision of an officer or Customs of Central Excise; (b) produce proof of the utilisation of such goods under the said supervision; (c) sell the articles so manufactured to industrial units for their use; (d) receive payments through banks for such articles sold to such industrial units; and (e) bind himself by execution of a bond in such form and for such sum as may be specified by the Assistant Collector of Customs, undertaking to pay, on demand, in respect of such quantity of imported goods as is not proved to the satisfaction of the Assistant Collector of

Customs to have been used for such manufacture without fulfilling the provisions in clauses (a) to (d), an amount equal to the difference between the duty leviable on such quantity but for the exemption contained herein and that already paid at the time of importation. By amending Notification 275/83, issued on 28-9-1983 clause (c) to the proviso was amended to read. 'Utilise the articles so manufactured himself, or sale the articles so manufactured to industrial units in their use and received payment through banks for such articles sold to such industrial units. The other conditions remained unchanged.

5. It is the Advocate's argument that the words 'utilise the articles so manufactured himself, or ... which figure in clause (c) to the proviso after the amendment of the notification in 19/83 were always intended to be present in the notification, and omitted by error, such error being corrected by issue of the subsequent amendment. It cannot be said however, that, as that notification stood on the date of importation of the sheets, that no meaning could be given to it, or that it could not be interpreted without considering the intention of the legislature. As it stood on that date, the notification only applied to a importer who manufactured the finished products, sold them to industrial units for their use and received payment through banks for such goods. It can therefore be successfully argued that the notification was only intended to apply to such manufacturers who fabricated the machinery for sale. In fact, in the presence of clear words of the notification, there would be no need to go beyond the plain and simple meaning of the notification to look at the intention of the legislature. It was within the competence of the legislature to issue the notification in the form in which it stood. The Supreme Court's judgment in the Novopan India case, relied upon by Shri Koshy itself is clear that a notification is to be construed strictly. The case in fact would not even go to the extent of the notification considered by the Supreme Court in the Bombay Oil Industries case, where, it is clear, the specifications for test of import tallow were erroneous. Therefore as held by the Supreme Court in that judgment, the amending notification of 1983 cannot be considered to be clarifying the earlier notification or to have retrospective effect. Neither of these two judgments had been carded down when the Tribunal passed its earlier order in the appellant's own appeal. That order therefore cannot bind us.