Goodwill Engineering Works and Another Vs. Commissioner of Customs, Trichy and Another

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Dec-07-2009

Judge : The Honourable Ms. Jyoti Balasundaram, Vice President &Amp; the Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal Nos.C/454 of 2002 (assessee), C/405 of 2002 (dept.)

Appellant : Goodwill Engineering Works and Another

Respondent : Commissioner of Customs, Trichy and Another

Advocate for Pet/Ap. : Shri S.Murugappan, Advocate. Shri C.Dhanasekaran, SDR

Judgement :

Per Jyoti Balasundaram

M/s.Goodwill Engineering Works, (hereinafter referred to as GEW) were issued a private bonded warehouse licence and granted permission to manufacture boats/launches in bond under Customs supervision, using imported parts or raw materials under Section 65 of the Customs Act, 1962. GEW imported 11 items and after re-warehousing, they cleared the same without payment of duty by availing exemption under Notification No.23/98-Cus. dt. 2.6.98. Show-cause notice was issued proposing to disallow the benefit under the notification and proposing recovery of Rs.34,98,749/-. Duty exemption was extended to 5 items and disallowed in respect of 6 items, by the Asst. Commissioner of Customs, Cuddalore. The Commissioner (Appeals) extended benefit to three more items; his order was challenged by the Revenue before the Tribunal. Importers also filed an appeal before the Tribunal against rejection of exemption benefit to the remaining items. Vide Final Order No.2012-2014/2001 dt. 10.12.01, the Tribunal remitted the case to the Commissioner (Appeals) for de novo adjudication. The Commissioner (Appeals) passed fresh orders rejecting the claim for exemption on Differential Global Positioning System (DGPS), Electronic Theodolite and Radio Telephone Equipment and extended benefit to Echo Sounder, Water and Grab Samplers and Radio Tide Gauge. Denial of benefit for the first three items has been challenged by the assessees in Appeal No.C/454/02 while the Revenue has challenged extension of benefit on the remaining 3 items, in Appeal No.C/405/02.

2. We have heard both sides. Function of each of the items in dispute is set out herein below :-

1) DGPS - This is a satellite based radio navigation system used to obtain the accurate position of the launch at any given time. The position taken by this equipment corresponds to the depth reading taken by the Echo Sounder indicating the depth at a specific point.

2) Electronic Theodolite since the survey launch carries out survey operation in the harbour and coastal water, shoreline is also required to be superimposed on the chart. Theodolite is fitted on a tripod and used on board the vessel for the purpose of superimposition of the shoreline.

3) Radio Telephone Equipment is used for communication between two vessels or between the vessel and the board.

4) Echo Sounder is an instrument which measures the depth of water at any given instant using ultrasonic wave.

5) Water and Grab Samplers are used for taking samples of water and sediments on the sea-bed for analysis and for basically correcting the echo-sounder.

6) Radio Tide Gauge instantaneously provides tide height corresponding with the depth measured so that the depth can be corrected to the mean sea level.

The vessel on which the above equipment is placed and used is a survey launch owned by the Dredging Corporation of India, a Govt of India Undertaking, for hydrographic survey in the habour and along the coast. From the functions of the items as set out above, it is clear that they are parts of boats and launches as they are required for the function of the survey vessel falling under CTH 89.06. As per Sl.Nos. 2 to 9 of the Table to Notification No.23/98, raw materials and parts falling under any chapter, for use in the manufacture of goods falling under Heading 89.01, 89.02, 89.04, 89.05 (except 8905.20) or 89.06, in accordance with the provisions of Section 65 of the Customs Act, 1962 are exempt from payment of duty. Since the items in dispute are parts for use and actually used in the manufacture of launches falling under Heading 89.06, and they are manufactured in accordance with the provisions of Section 65 of the Act, the benefit of the notification is admissible to all six of the disputed items. We, therefore, set aside the denial of the benefit of exemption to DGPS, Electronic Theodolite, and Radio Telephone Equipment and uphold the extension of benefit to Echo Sounder, Water and Grab Samplers and Radio Tide Gauge.

In the result, Appeal No.C/454/02 is allowed while Appeal No.C/405/02 is dismissed.