Sandeep Industries Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-19-1996

Reported in : (1996)(86)ELT556TriDel

Appellant : Sandeep Industries

Respondent : C.C.E.

Judgement :

1. In the present appeal the point for determination is whether the goods exported to Nepal are eligible to the concession under Notification No. 175/86, dated 1-3-1986.

2. The facts of the case are that the appellants are a small scale unit. They cleared certain goods for export to Nepal. The duty involved on these goods amounted to Rs. 48,407.80. The Department alleged that Notification No. 175/86 does not cover the goods cleared for export to Nepal and therefore, asked the appellant to explain as to why duty amounting to Rs. 48,407.80 should not be demanded from him. The appellant submitted that the goods were exported to Nepal and since the appellant was a small scale unit, it was entitled to clear the goods without payment of duty up to the limit prescribed under Notification No. 175/86 as amended. The appellant also submitted that the admitted position is that the goods were actually exported and since the goods exported are eligible to nil rate of duty inasmuch as they can be cleared on payment of duty and the duty so paid gets rebated to them or they can export the goods under Bond without payment of duty; that since the appellant was a small scale unit, he was entitled to the benefit of the small scale

exemption. The lower authorities, however, held that since Notification No. 175/86 was applicable to only goods cleared for home consumption, therefore, any goods cleared for export to Nepal will not be covered by the Notification No. 175/86, dated 1-3-1986 and therefore, confirmed the demand.

3. Against this order of the Collector (Appeals), the appellant has filed the present appeal.

4. Shri J.M. Sharma, learned DR appearing for the respondent submitted that a close look at the word 'use' in the Notification will show that the Notification No. 175/86 is applicable only to specified goods cleared for home consumption and therefore, he submits that any goods which are not cleared for home consumption shall not be covered by the notification. He submits that admitted position was that the goods were cleared for export to Nepal and therefore, the Notification does not cover these goods. In support of his contention, he cited and relied upon the decision of the Tribunal in the case of Jaishree Engg. Co.

(Pvt.) Ltd. v. C.C.E. reported in 1989 (39) E.L.T. 449. He referred to discussion and finding of the Tribunal in para 21 of this order and submitted that it has been clearly brought out in this paragraph that the value of the goods exported cannot be added to the value of clearance for home consumption as home consumption is different from export and that the word 'use' in the Notification is for home consumption. The ld. DR, therefore, submitted that the demand confirmed by the lower authorities may be upheld.5. Heard the submissions of the learned DR. None appeared for the appellant but there is a request for consideration of his case on merits.

6. We find that the admitted position in this case is that the manufacturer is a small scale unit. The admitted position further is that the goods in dispute were cleared for export to Nepal. The only controversy that arose is whether Notification No. 175/86 permits exemption to goods cleared for export to Nepal. For this we find that the respondent relied on the word 'use' in the Notification No. 175/86 which exempts specified goods cleared for home consumption. The simple meaning of the word 'home consumption' is that the goods are cleared for being consumed in the country. This word is distinct from the word 'export'. The word 'export' has been

defined in the Customs Act meaning sending the goods out to a place outside India. 'Export' and 'home consumption' are distinct words and represent two different situations.

As the word 'use' in the notification is for 'home and admittedly the goods in the instant case were exported to Nepal and therefore, the goods in dispute will not be entitled to the benefit of Notification No. 175/86 and we hold accordingly.

7. In the circumstances, the impugned order is upheld and the appeal is rejected.