(1998) 04 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal No. 511 of 1988

Collector of Central Excise, Ahmedabad APPELLANT

Vs

Meteor Satellite Ltd. RESPONDENT

Date of Decision : 15-04-1998

Acts Referred:

Citation : (1998) 78 ECR 258 : (1998) 102 ELT 516 : (1998) 5 JT 610 : (1998) 5 SCC 466

Hon'ble Judges : S. P. Bharucha, J;S. C. Agrawal, J;M. K. Mukherjee, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the Revenue against the judgment of the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred 10 as "the Tribunal") dated 16-10-1987. The only question which falls for consideration in this appeal is whether the respondent-Company is entitled to avail the benefit of the exemption from payment of excise duty under Notification No. 71/78 dated 1-3-1978.

2. The respondent-Company was manufacturing motor vehicle parts. Some of the parts so manufactured were specified goods covered under Tariff Item 34-A while others were covered under Tariff Item 68. The clearance of specified goods covered under Tariff Item 34-A by the respondent during the Financial Year 1979-80 was more than Rs 15,00,000 but the aggregate clearance of excisable goods was less than Rs 20,00,000. The exemption granted under Notification No. 71/78 dated 1-3-1978 was not applicable to a manufacturer:

"(i) during the Financial Year 1978-79, if the aggregate value of the specified goods cleared, if any, by him or on his behalf, for home consumption, from one or more factories, during the period commencing on the 1st day of April, 1977 and ending on the 28th day of February, 1978 he exceeded Rs 13.75 lakhs;

(ii) during the Financial Year 1978-79, if such clearances, if any, of the specified goods, had exceeded rupees fifteen lakhs; and

(iii) who manufacture excisable goods falling under more than one item number of the said First Schedule and the aggregate value of all of excisable goods cleared by him or on his behalf for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs."

3. The Tribunal was of the view that the respondent-Company was entitled to the benefit of the exemption under Notification No. 71/78 because the goods manufactured by the respondent-Company fall under more than one item and the total production did not exceed Rs 20,00,000. In taking the said view the Tribunal has followed the judgment of the Calcutta High Court in R.K. Chemical Industries Private Ltd. Vs. Superintendent of Central Excise, Calcutta-III Division and Others,

4. Shri Dushyant Dave, the learned Senior Counsel appearing for the respondent-Company, has pointed out that the said decision of the Calcutta High Court in R.K. Chemical Industries Private Ltd. Vs. Superintendent of Central Excise, Calcutta-III Division and Others, was given by a learned Single Judge of the High Court and appeal against the said judgment was dismissed by the Division Bench of the High Court. Civil Appeal No. 1295 of 1988, Union of India v. R.K. Chemicals Industries (P) Ltd. filed against the decision of the Division Bench of the High Court was dismissed summarily by this Court by order dated Union of India v. R.K. Desai, (1993) 2 SCC 49 .

5. In the order dated 4-2-1997 passed by a two-Judge Bench of this Court whereby this matter has been referred to a larger Bench, reference has been made to the decision of this Court in Collector of Central Excise, Madras Vs. Arason and Company, In that case the Court has considered Notification No. 80/80 dated 19-6-1980 which also granted exemption and was similar to Notification No. 71/78 dated 1-3-1978. Clauses (i) and (ii) of Notification No. 80/80 were in the same terms as Clauses (ii) and (III) of Notification No. 71/78. In that case the respondent was manufacturing two types of specified goods and the question was whether such a case would be covered by Clause (ii) of Notification No. 80/80 which was similar to Clause (iii) of Notification No. 71/78. It was held that since the manufacturer was producing two types of specified goods the case would not be covered by Clause (II) and would fall under Clause (i) which dealt specifically with the specified goods. In the present case the respondent-Company was manufacturing specified goods as well as other goods. The present case cannot, therefore, be held to be covered under Clause (ii) of Notification No. 71/78 and has been rightly held to fall under Clause (iii) of the said notification.

6. In the circumstances we do not find any merit in this appeal and it is accordingly dismissed. No order as to costs.