(2023) 10 CESTAT CK 0034

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 3001 Of 2012

DVB Design + Engineering — APPELLANT

Vs

Commissioner Of Central Tax Hyderabad ? IV — RESPONDENT

Date of Decision : 16-10-2023

Acts Referred:

Citation : (2023) 10 CESTAT CK 0034

Hon'ble Judges : Anil Choudhary (J);A.K. Jyotishi, Member (T)

Bench : Division Bench

Advocate : Lalit Mohan Chandna, V. Srikant Rao

Final Decision : Allowed

Judgement

Anil Choudhary, (J)

1. The issue involved in this Appeal is whether the Appellant is liable to Education Cess again on the amount, which has been worked out by calculating the Customs Duty payable on the goods in respect of clearances made by the Appellant, who are 100% EOU, to DTA.

2. The brief facts are that the Appellants are a 100% EOU, engaged in the manufacture of Dies & Tools, falling under Chapter 8207 3090 of the CETA. They also have DTA Sale Permission from Development Commissioner. They have been clearing their goods in DTA on payment of duty. Since Appellants are a 100% EOU, they are governed by provisions of Notification No. 23/2003-CE dated 31.03.2003, which deals with payment of duty by a 100% EOU on DTA clearance. They are clearing in DTA market those goods, in the manufacture of which, only indigenous raw materials are used.

3. The Appellants are therefore, covered under S.No.3 of the Notification No. 23/2003-CE. The duty payable on such clearances is ‘equivalent’ to duty payable on like goods manufactured in India by a unit, which is not a 100% EOU. The Appellants have been paying duty @10% plus 2% and 1% Cess on such

clearances in DTA. The department has given a Notice demanding Education Cess of 2% and 1% on the above payment of Excise Duty @ 10.3%, on the ground that the Appellant's clearances are covered under S.No.2 of the Notification No. 23/2003-CE and consequently, Appellant Company should pay duty equal to the "aggregate of duties of customs leviable on like goods".

4. A reply was given to the Notice by the Appellant, explaining, inter alia, that their clearances are covered under S.No.3 of the Notification and that the Notice has been given under wrong provision of law, which is not applicable to clearances effected by them. However, learned Asst. Commissioner, Div-N-Hyderabad, has confirmed the duty of Rs.45,921/- along with 100% penalty, without giving any findings or reasons, whatsoever, for non-acceptance of the fact that their clearances have been under S.No.3 of the Notification. In other words, the order is silent on this issue. The order does not give any findings as to why duties paid under S.No.3 of the Notification are not in conformity with the provisions of the law and how Appellant's clearances are covered under S.No.2 of the said Notification.

5. The Commissioner (Appeals), vide OIO dated 18.07.2012 has confirmed the order of the Adjudicating Authority and accordingly, Appellants have also paid the entire duty of Rs.45,921/- with interest as Pre-deposit, as per Order in Stay Petition No.37/2012-ST dated 22.03.2012. Aggrieved by the said Order, the Appellants are before this Tribunal.

6. Heard the parties.

7. We find that the issue is squarely covered in favour of the Appellant by the precedent ruling of this Tribunal in the case of Kemrock Industries & Exports Ltd vs CCE [2015 (319) ELT 132]. Accordingly, the Appeal is allowed and the Impugned Order is set aside. The Appellant is entitled to consequential benefits, in accordance with law.

8. Appeal allowed.