

**Lokhandwala Construction Vs. C.C.E.**

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**SooperKanoon Citation :** [sooperkanoon.com/10324](http://sooperkanoon.com/10324)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Nov-06-1996

**Reported in :** (1997)(92)ELT703Tri(Mum.)bai

**Appellant :** Lokhandwala Construction

**Respondent :** C.C.E.

**Judgement :**

1. With the consent of both the sides appeal taken up for disposal after granting waiver of pre-deposit.
2. The appellant was engaged in the manufacture of flush doors. Such doors were utilised for the purpose of its main activity that is construction of buildings. For the manufacture of these doors from 1991 to 1994 it did not comply with any of the Central Excise formalities which a [manufacturer] is required to comply with such as licensing or registration, filing of classification list and price list etc. It also did not pay duty on the goods cleared by it. On the Department coming to know of the fact of manufacture and clearance, notice was issued proposing recovery of duty on the doors manufactured and cleared by the appellant. After considering the cause shown and hearing the appellant, the Commissioner has passed orders impugned in the appeal.
3. The advocate for the appellant contends that it was entitled to the benefit of Small Scale exemption contained in Notification No. 175/86 for the years 1990-91, 1991-92 and 1992-93 and Notification No. 1/93 for the year 1993-94. He says that

this benefit would be available even to an assessee who have not declared that it is intended to avail of the notifications or it not otherwise followed Central Excise procedure and contends that the Commissioner's conclusion denying the benefit only for the reasons that declaration was not filed is not sustainable.

4. Departmental Representative adopts the reasonings in the order under appeal.

5. In *Vikram Laminators Pvt. Ltd. v. CCE, Aurangabad -1995 (79) E.L.T.147* (Tribunal), this Tribunal has, following the view consistently expressed, held that the benefit of Notification cannot be denied because other formalities were not followed. It has extended the benefit of Notification No. 175/86 holding that the eligibility to the Notification is independent of exemption from licensing control for filing of declaration. Following series of decisions of which this is the last one we hold that the appellant's claim for benefit of the two small scale notifications could not been dismissed only on the ground that the declaration had not been filed. We therefore set aside the impugned order and allow this appeal. The Commissioner shall consider whether the appellant satisfying the requirement of each of the two notifications in question and thus is entitled to their benefit and shall pass appropriate orders according to law.

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