

Collector of C.Ex. Vs. Apsara Art Material Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-1998

Reported in : (1999)(107)ELT216TriDel

Appellant : Collector of C.Ex.

Respondent : Apsara Art Material Pvt. Ltd.

Judgement :

1. The issue involved in this appeal filed by the Revenue is as to whether an assessee can simultaneously avail benefit of full exemption in terms of Notification No. 176/86 which goods falling under one heading and pay duty and avail Modvat credit on goods falling under another heading.

2. The respondents herein are a registered small scale unit manufacturing Nitro Cellulose lacquers falling under Heading 32.08 and (2) P.V.A. glue falling under Heading 35.06. They filed classification list effective from 1-4-1987 and 1-11-1987 in respect of Nitro Cellulose lacquers. When they crossed the clearance value of Rs. 15 lakhs, they started paying on the clearance of this product and took Modvat credit on duty paid thereon. In November, 1987, they commenced manufacture of PVA glue and claimed full exemption upto the value of Rs. 15 lakhs. Since the department was of the view that simultaneous availment of Modvat and exemption under Notification No. 175/86 even though in respect of the goods under different headings could not be availed, a show cause notice was issued proposing demand of duty on P.V.A. glue for the period from December, 1987 to March, 1988. The demand was confirmed by the Assistant Collector; however, the lower

Appellate authority accepted the plea of the respondents that simultaneous availment was permissible and he set aside the Assistant Collector's order and allowed the appeal and hence this appeal by the Revenue.

3. We have heard Shri H.K. Jain, learned DR and Shri Pradeep Jain, learned Advocate. We find that this issue has been settled by the Tribunal in the case of Faridabad Tools Ltd. 1993 (63) E.L.T. 759 and the appeal filed by the Revenue against this order of the Tribunal was rejected by the Hon'ble Supreme Court as seen from 1996 (82) E.L.T.A-149. The Tribunal's order in the case of Faridabad Tools has been followed subsequent to the Supreme Court order in the case of Collector of Central Excise, Meerut v. Nova Vision 1996 (15) RLT 336 (Tribunal).

The plea of the learned DR that the Supreme Court dismissal of the Revenue's appeal in the case of Faridabad Tools will not act as a precedent because the appeal has been dismissed by the Supreme Court in limine, cannot be accepted since he is not able to substantiate this averment and further since the report of this Supreme Court order in 1996 (82) E.L.T. A-149 only states that the Supreme Court Bench has dismissed the Civil appeal filed by the Collector of Central Excise against the final order passed by the Tribunal in the case of Faridabad Tools 1993 (63) E.L.T. 759. In this view of the matter and noting that the Tribunal has subsequently held that simultaneous availment of Modvat and full exemption is available, we see no reason to interfere with the impugned order and reject the appeal of the Revenue.

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