

Cce Vs. Gebbs Data Product P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-02-1998

Reported in : (1998)(77)LC535Tri(Mum.)bai

Judge : G Srinivasan

Appellant : Cce

Respondent : Gebbs Data Product P. Ltd.

Judgement :

1. This is an appeal filed by the department against the decision of the Collector (Appeals) No. KPS-622/B-II/91 dated 2.1.1992 made in V-2(Ch. 84) 383/91 whereunder while reversing the decision of the Assistant Collector he had held that for issuing the show cause notice for a period of more than six months it ought to have been issued by the Collector and not by any authority lesser than that of the Collector. The respondents are engaged in the business of manufacturing monitor falling under Chapter 84. The Assistant Collector by a show cause notice dated 12.9.1988 charged the respondent under Rule 57-1 that for a period from July 1987 to February 1988 they have wrongly availed Modvat credit on some of the inputs without filing the declaration. After hearing the parties the Assistant Collector passed an order dated 12.8.1991 confirming the demand against which an appeal was filed and the Collector (Appeals) by his impugned order held that for SCN cum demand invoking a period of more than six months should have been issued by the Jurisdictional Collector. Hence the present appeal.

2. Shri S.V. Singh the learned D.R., while reiterating the grounds of appeal invited my attention to the judgment of the Bombay High Court in the case of *Fabril Gasosa v. Union of India and Ors.* 1997 (72) ECR 545 where the High Court has held that in a case of SCN demand invoking more than six months it should be given only by the Collector. The learned Counsel for the respondent also invited my attention to the decision of a three Member Bench of the Tribunal in *Brakes India Ltd. and Ors. v. CCE, Madras* 1996 (15) RLT 68. There also the larger Bench has held in the same way as the Bombay High Court.

3. Following the said judgment of the Bombay High Court in the above case, I dismiss the appeal of the department.

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