

**Collector of Central Excise Vs. Cosmos Engineers**

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

**Decided On :** Apr-20-1998

**Reported in :** (1999)(108)ELT213TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Cosmos Engineers

**Judgement :**

1. In this appeal filed by the Revenue, the matter relates to the eligibility of the goods other than of polystyrene classifiable under Chapter 39 of the Central Excise Tariff to the benefit of Notification No. 53/88-C.E., dated 1-3-1988. The Collector of Central Excise (Appeals) had rejected the reference application filed by the Department under Section 35E of the Central Excise Act, 1944 against the order passed by the Assistant Collector of Central Excise approving the classification lists of the respondents, M/s Cosmos Engineers, claiming exemption on the various goods in terms of that Notification No. 53/88-C.E. The appellate authority had observed that where more than one notification is available to an assessee, it was open to him to avail of either of them and the fact that Serial No. 39 of the Table annexed to that notification was applicable to the assessee did not debar him from availing of the benefit against Serial No. 40 of the said table.

2. The matter was posted for hearing on 20-4-1998. When the matter was called, no one appeared for the respondents. As the matter is old, we are proceeding to deal with the matter on merits after hearing Shri H.K. Jain, SDR, who is present for the appellants/Revenue.

3. We have carefully considered the matter and have gone through the facts on record.

4. We find that the matter is covered by the Tribunal's decision in the case of C.C.E., New Delhi v. Thermopack Indus., wherein the Tribunal under their Final Order Nos. 70 & 71/98-C, dated 18-2-1998 (in Appeal Nos. E/3098-99/92-C) had observed that the Serial No. 39 and Serial No. 40 of the Table annexed to Notification No. 53/88-C.E. were similarly worded and it was held that it was the option of the assessee to pay the duty and not to avail of the full exemption which in any case was subject to the conditions as given in column No. 5 of the said table.

5. Following the above Tribunal's decision, we do not find any infirmity in the view taken by the Collector of Central Excise (Appeals) in this case. As a result, there is no merit in this appeal filed by the Revenue and the same is rejected. The cross-objections are also disposed of in the above terms.

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