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Commissioner of Central Excise Vs. Bajaj Auto Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-23-1998

Reported in : (1999)(63)ECC625

Judge : K Venkataramani, Vice-, J S Murthy

Appellant : Commissioner of Central Excise

Respondent : Bajaj Auto Ltd.

Judgement :

1. The appeal has been filed by the Commissioner of Central Excise and Customs, Aurangabad against the order dt. 28.2.91 passed by the Commissioner of Central Excise (Appeals), Mumbai. The facts are that respondents applied to the Jurisdictional Assistant Commissioner for transfer of Draw Die Petrol Tank which is a Die for machine trial to another party in Mumbai, who manufacture Press machine. The Draw Die Petrol Tank had been received by the Respondents under Chapter X Procedure of the Central Excise Rules under nil duty gate pass on 11.5.85. The Assistant Commissioner by his letter dt. 3.1.90 informed them that they cannot remove the draw die petrol tank under Rule 196BB of Central Excise Rules, because the goods have been received under Chapter X Procedure, and the Notification under which they were so received No. 167/79 had since been withdrawn. The appeal against the Assistant Commissioner's order was allowed by the Commissioner (Appeals) who held that once the goods are received under Chapter X Procedure, then further removals are to be regulated under the provisions of Rule 196BB.2. Shri A.R.S. Kumar, the Ld. JDR referred to the

grounds of appeal and submitted that though the goods were received under Chapter X procedure while Notification no. 167/79 was in force, the provisions of Chapter X of Central Excise Rules cannot be applied even after the notification itself has been withdrawn. The Respondents are not present, but have asked for decision on merits. We find that the Notification No. 167/79 is one which grants the exemption to the goods in question subject to following the procedure of Chapter X of Central Excise Rules. In this case at the time of receipt of the goods into the respondent's factory, the Notificalion was in force, and thus it has been received under Chapter X procedure. Rule 196BB enables goods received under Chapter X procedure to be cleared outside for testing the carrying out of any other operation necessary for the completion of the industrial process and for it to be returned, thereafter, to the assessees premises. In such a scheme of the rules, therefore, once the material has been received as per the condition in the Notification by following the Chapter X procedure, and, as we find in this case, it has also been put to the intended use, then the sending out of the goods for carrying out further process will be fully covered by Rule 196BB which is specifically for the purpose in respect of excisable goods obtained under Rule 192. In such a situation, we are in agreement with the finding of the Commissioner (Appeals) that Notification 169/79 enabled appellants to receive the goods under Chapter X procedure and the withdrawal of this Notification will not deprive the status-of the goods as having been received under Chapter X procedure. We, therefore, see no reason to interfere with the impugned order. The appeal is dismissed.

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