

C.C.E. Vs. Dhoot Compack Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-07-1998

Reported in : (1999)(63)ECC556

Judge : J T P.C., S Kang

Appellant : C.C.E.

Respondent : Dhoot Compack Ltd.

Judgement :

1. Short question involved in this appeal is whether the benefit of third proviso to Rule 9 is available to the respondents herein for removal of goods which stipulates removal of goods without payment of duty for manufacture of another commodity in the factory. Third proviso envisages 3 conditions on the fulfilment of which the goods could be removed without payment of duty for manufacture of another commodity. A show cause notice was issued to the respondents herein that they are not entitled to the benefit of third proviso to Rule 9 of the Central Excise Rules 1944. On adjudication the Asstt. Collector of Central Excise held that condition No. 1 & 2 were fulfilled but the condition No 3 of third proviso was not fulfilled and hence the benefit of the said proviso was denied to the respondents.

2. On appeal, the respondents herein succeeded before the lower appellate authority which held that the third condition has also been fulfilled inasmuch as the final product was liable to a positive rate of duty during the period 1.3.87 to 16.3.87. Since the first two conditions had already been held to have been fulfilled

by the Asstt.

Collector and there was no appeal from the Revenue against the finding of the Asstt. Collector, the Collector (Appeals) allowed the appeal with consequential benefit. It is against the aforesaid order that the Revenue has filed this appeal.

3. Learned SDR Sh. A.K. Agarwal was pointed out that it is the first condition which is not fulfilled in the present case. This point in our view cannot be taken at this stage because the Revenue did not file an appeal regarding non-fulfilment of condition No. (1) of the third proviso to Rule 9 before Collector (Appeals). Appeal of Revenue fails on this ground alone. Accordingly we dismiss the appeal.

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