A.D. Engineers Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-06-1998

Reported in : (1999)(105)ELT665TriDel

Appellant : A.D. Engineers

Respondent : Collector of Central Excise

Judgement :

1. The appellant is a Small Scale Unit enjoying the benefit of Notification No. 175/86. They cleared the goods manufactured by them on payment of duty @ 10% ad valorem as applicable to units availing of Modvat credit on inputs in terms of para a(i) of the said Notification.

However, they had not taken credit of duty paid on inputs and, thus, had not availed themselves of Modvat benefit. The adjudicating proceedings held that the appellant was liable to pay duty at Tariff rate as they had not availed of Modvat benefit, even though they had filed a declaration under Rule 57G for the purpose of Modvat credit.

The impugned order upholds the said adjudication order.

2. Arguing the appeal, Shri Hashmat Nabi, learned Counsel submits that the appellant could not be treated as a Modvat unit as they had not availed of Modvat credit at all on inputs. They had only filed a Modvat declaration. Therefore, they were entitled to duty free clearance of goods under the provisions of paragraph

a(ii). In any event, there is no justification for payment of duty at Tariff rate. He refers us to the decision of the CEGAT in Jai Industries v. C.C.E., 1993 (68) E.L.T.475, wherein the Tribunal held that the filing of Modvat declaration did not amount to availing of Modvat credit and that an assessee does not become ineligible for exemption under para a(ii) of Notification No. 175/86 on account of filing a Modvat declaration. Shri Hashmat Nabi, submits that the decisions of the CEGAT clearly covers this case and appeal is required to be allowed.

4. We have perused the records of the case and have considered the rival submissions. We find that in the instant case, appellant had not taken credit of duty paid on the inputs. Therefore, this case is not covered as a Modvat unit by para a(i) of Notification. They were eligible for the exemption as provided in para a(ii) of Notification No. 175/86 and demand of duty at Tariff rate was not justified. The appeal is accordingly allowed with consequential relief to the appellant and the impugned order is set aside.