

Kinetic Engineering Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-17-1999

Reported in : (1999)LC114Tri(Mum.)bai

Appellant : Kinetic Engineering Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellants in this case requested for disposal on merits. I have heard Shri A. Ashokan, Id. DR for the revenue.

2. The assesseees were receiving certain goods from small sector manufacturers falling under the purview of Notification No. 175/86, dated 1-3-1986 as amended. This notification was in force upto 31-3-1993. On that date/ similar provisions were introduced by Notification No. 1/93, dated 28-2-1993 which would have effect from 1-4-1993. Co-existent with the notification was Rule 576 which permitted higher notional credit to be taken provided such grant of credit was provided for in a notification. The text of the first named notification contained in para 5 was as under : "Notwithstanding the exemption contained in this notification, in respect of the specified goods which are subjected to concessional rate of duty (other than those specified goods which are wholly exempted from the duty of excise leviable thereon), under this notification, and received on or after the 1st day of April, 1988, in a factory where such goods are used as inputs in or in relation to the manufacture of final products in terms of the provisions of Section AA of Chapter V of the said rules, the credit in respect of the inputs shall be allowed under Rule

57B of the said rules, at the rate of duty applicable under this notification plus an amount calculated at the rate of 5% ad valorem, or at the rate of duty otherwise applicable but for this notification, whichever is less - provided that nothing contained in this paragraph shall apply in respect of the inputs which are received in any factory after 31st day of March, 1993." 3. In the present case, the inputs were cleared by the small scale manufacturers before 31-3-1993. But the inputs were received in the factory thereafter when Notification No. 175/86 was no longer in existence. On this ground both the lower authorities denied higher notional credit. Before the lower authorities and before the Tribunal reliance is placed on the Collector (Appeals) order reported in 1994 (72) E.L.T. 990. The Collector (Appeals) in the impugned order has disagreed with the findings of the Collector (Appeals) in the above reported case and correctly so. The provisions reproduced above extended the benefit only where such inputs were received (Emphasis added) in the user factory and did not cover the situation where such receipt was subsequent to the cessation of the notification. The succeeding notification did not have a similar provision.

4. I find that the Collector (Appeals) had correctly analysed the provision of the notification. His order sustains. The appeal is dismissed.

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