S.S. Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-24-2000

Reported in : (2000)(93)LC359Tri(Mum.)bai

Judge : S T Gowri, J Murthy

Appellant : S.S. Industries

Respondent : Cce

Judgement :

1. The application is for waiver of deposit of duty of Rs. 50,867/- demanded on the ground that applicant ought to have cleared goods without payment of duty under notification 1/93 and therefore was not entitled to take modvat credit of the inputs, which it used in the clearance of such finished product, which it cleared on payment of duty.

2. Advocate for the applicant cites the decision of the Tribunal in Everest Converters v. CCE 1995 (80) ELT 95 : 1995 (60) ECR 670 (T) in support, while the departmental representative contends that the ratio of the decision, that the assessee has right to pay duty even if the goods are exempted, requires reconsideration.

3. We have at this stage to make a distinction between an unconditional exemption and those of conditional exemption, as notification 1/93 is, the assessee himself has reason to believe rightly or wrongly that he does not satisfy

the terms of the exemption and therefore he choose not to avail of. On this prima facie understanding of the matter we waive deposit of the duty and stay its recovery.

4. Since it was mentioned in the course of argument that the Tribunal had passed final orders on this issue i.e., whether an assessee do or do not have option to avail of an exemption, it appears that therefore this matter can be decided on the basis of the said decision. Advocate for the applicant seeks time to produce the Tribunal's order.

Accordingly the appeal is listed for hearing on 28.3.2000.