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Commissioner of Central Excise Vs. R.C. Biscuits and Confectionary

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-2000

Reported in : (2001)(130)ELT914TriDel

Appellant : Commissioner of Central Excise

Respondent : R.C. Biscuits and Confectionary

Judgement :

1. The respondents, vide letter dated 26-2-2000, made a request to decide the appeal on merits. Therefore, the appeal is being taken up for hearing in the absence of the respondents.

2. The revenue filed this appeal against the Order-in-Appeal, dated 27-5-1999 passed by the Commissioner (Appeals).

3. Brief facts of the case are that the respondents are engaged in the manufacture of biscuits falling under sub-heading 1905.11 of the Central Excise Tariff and were availing the benefit of Modvat scheme.

On 1-4-1996, the respondents opted for full exemption from payment of central excise duty under Notification 1/93, dated 28-2-1993. The condition of the small scale exemption was that that the respondents were not entitled for credit on inputs as well as on capital goods as they were clearing final product without payment of duty. At the time of opting out of the Modvat scheme on 31-3-1996, some balance of credit in respect of capital goods under R.G. 23C Pt. II was there.

Notification No. 1793 provides the total exemption from payment of excise duty up to the clearance of Rs. 30 lakh. After crossing this limit; the respondents again started clearing the goods on payment of duty and they also utilised the credit, which was in R.G. 23C Pt. II at the time when they out of the Modvat scheme on 31-3-1996. The adjudicating authority confirmed the demand on the ground that the credit, which was in balance on 31-3-1996, when respondents opted out of Modvat scheme, lapses. The respondents filed the appeal and the same was allowed.

4. Ld. D.R., appearing on behalf of the Revenue, submits that when respondents opted out of Modvat scheme and started availing the benefit of small scale exemption notification, the respondents cannot utilise the credit after crossing the exemption limit. He submits that the Hon'ble Allahabad High Court in the case of Super Cassettes Industries reported in 1997 (94) E.L.T. 302 held that the Modvat credit taken in respect of inputs, which were used in the manufacture of final product and cleared without payment of duty, lapses. In this case, the respondents have some balance in R.G. 23C Pt. II on account of capital goods when they opted out of the Modvat scheme and started clearing the goods under small scale exemption. Therefore, when the respondents again started clearing the goods on payment of duty, in view of the Allahabad High Court decision in the case of Super Cassettes Industries (supra), they cannot avail such credit. In view of the above discussion, the impugned order is set aside and the appeal is allowed.

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