Commissioner of Central Excise Vs. Wipro Ltd.

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SooperKanoon Citation : sooperkanoon.com/18397

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-02-2000

Reported in : (2000)(120)ELT356Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Wipro Ltd.

Judgement :

1. The respondent was absent and unrepresented yesterday. We, therefore, heard the departmental representative and reserved our orders for dictation today.

2. This appeal by the department is against the order of the Collector (Appeals) holding that M/s. Wipro Ltd, the respondent, was entitled to take Modvat credit of the duty paid on tin plates and sheets, which were sent out by it to job workers for conversion into tin containers which in turn were re-turned to it for packing vanaspati. The Collector (Appeals) had not accepted the view proposed in the notice, that these containers were not used in or in relation to the manufacture of the finished products, since that - vanaspati -had already been manufactured before it was packed. The same ground is taken up in the appeal.

3. What the respondent sold was vanaspati referred to as "vegetable product" in the tariff, packed in such tin containers. It is not anybody's case that the vanaspati can be sold without being packed. The tins were required to make the vegetable product marketable and were therefore used in or in relation to the manufacture of the finished products.

4. The other ground raised in the appeal is that since the tins were exempted from duty by notification 214/86, taking credit would be barred by application of rule 57C. This is not acceptable for two reasons. The first is that notification 214.86 has been held by the Tribunal to be different from other exemptions issued under rule. The Tribunal even on this notification to give effect to the provisions relating to Modvat in situation where finished products are manufactured and consumed or returned by job worker for consumption by the supplier of the raw material. It noted that otherwise, Modvat provision would apply and credit would be available with the net result being the same, there only being the addition of considerable paper work on the part of the assessee and the department. By applying this ratio, therefore, the fact that the goods are entitled to exemption rule would not be relevant. The second reason for not accepting this ground is that the tin containers would be in the nature of intermediate product which come into existence in the course of the manufacture of the finished products, vegetable products packed in tin containers. The ratio of the decision of the larger bench of the Tribunal in Ashwin Vanaspati Foods v. CCE -1994 (70) E.L.T. 754 (Tribunal) would apply. The facts in both cases are identical, as was the question for consideration by the bench.