

Commissioner of Central Excise Vs. Beppee Coating Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-17-2000

Reported in : (2001)(74)ECC676

Judge : J T J.H.

Appellant : Commissioner of Central Excise

Respondent : Beppee Coating Ltd.

Judgement :

1. This appeal is filed by the Revenue against the Commissioner's order wherein he set aside the denial of modvat credit by the Asstt.

Commissioner. The present application has been filed by the respondents for early hearing of the department's appeal on merits.

2. Shri A.K. Jain JDR represented the Revenue. None appeared for the assessee.

3. The point of law being very short, the appeal was taken up for disposal. The respondents availed modvat credit of duty on certain goods. It appeared that there were two exemption notifications relating to the inputs. One prescribed concessional rate of duty and the other one granted clearance free of duty. The manufacturers of the inputs chose to pay the concessional rate of duty instead of availing of the other notification. When the recipient manufacturer who is the respondent today took the credit, the credit was denied in the impugned proceedings.

4. The Respondent relied upon the Tribunals's Order No. C-I/2101-2110 dated 2.6.2000. Paragraph 9 thereof says-- if an assessee choose (sic) [chooses] not to avail of an exemption notification, it cannot be said that he is in effect exercising an option to avail or not to avail the parliamentary will. It is the same Legislature which has provided him two rates of duty one of which he is required to follow.

5. Thus the Revenue cannot force the first manufacturer as to the availment of a particular notification. Consequently, the recipient manufacturer cannot be deprived of the credit. In the result the appeal is dismissed.

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