

Commissioner of Central Excise Vs. Bhag Polymers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2000

Reported in : (2001)(128)ELT142TriDel

Appellant : Commissioner of Central Excise

Respondent : Bhag Polymers

Judgement :

1. The respondents manufacture excisable goods falling under sub-headings 3902.10, 3901.90 and 3206.90 of the Central Excise Tariff.

They filed a classification list w.e.f. 1-4-1993 in which they opted to pay duty on the goods manufactured by them inspite of their eligibility to exemption under Notification No. 1/93-C.E., dated 28-2-1993 upto the clearance value of Rs. 30 lakhs. They also declared to avail the Modvat credit under Rule 57A. They were issued a show cause notice dated 30-6-1994 by the Asstt. Commissioner of Central Excise, MOD-VI, New Delhi, calling upon them to show cause why they should not avail the exemption under the aforesated notification and why the Modvat credit amounting to Rs. 1,36,285/- taken by them during the period from 1-1-1994 to 31-3-1994 availed on the inputs used in the manufacture of their final products should not be disallowed in terms of the provisions of Rule 57C. After considering the reply of the party, the Asstt. Commissioner vide his order dated 17-11-1998 held that the Modvat credit of the aforesated amount was admissible to the party and dropped the proceedings initiated against them.

2. The above order passed by the Asstt. Commissioner was taken up in appeal before the Commissioner (Appeals), New Delhi, and the Commissioner (Appeals) dismissed the appeal of the Department.

3. This is the second stage appeal by the Revenue. I have heard Shri Ashok Kumar, JDR, for the Revenue and Shri Keshav Pandey, Excise Manager of the respondents. It is observed that the Asstt. Commissioner while deciding the matter in favour of the party has relied on a number of decisions or the CEGAT. Some of these are as follows -Tata Oil Mills v. Collector 4. It is contended in the Revenue appeal that on similar issue in the case of CCE, New Delhi v. Pascal Paramount (P) Ltd., the Reference Applications have been moved before the Hon'ble High Court. The fact that, a Reference Application is pending for consideration before the High Court, in itself could not be a ground to not to follow the ratio of a settled proposition of law. Further, the Tribunal on Final Order No.A/572/97-NB (SM), dated 29-7-1997 has allowed the appeal the respondents in the similar issue.

5. In view of the above discussion, the Revenue appeal has no force and the same is dismissed. The cross-objections filed by the respondents are also disposed of in the same terms.

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