Commissioner of Central Excise, Vs. M/S. Raja Steel Works and M/S Gopal

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SooperKanoon Citation : sooperkanoon.com/20838

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Raja Steel Works and M/S Gopal

Judgement :

1. The Revenue seeks reference of the following question of law stated to have arisen out of Tribunal's Final Order dated 20.8.98.

"Whether the Hon'ble CEGAT is correct in extending the deemed credit benefit under Ministry's Order No.TS/36/94-TRU dated 1.3.94 to a Unit availing of exemption in terms of Notification No.1/93-CE dated 28.2.93 even after it crosses the exemption limit of Rs.75 lakhs and starts paying duty at the normal rate?" 2. The brief facts leading up to the filing of the reference application are that both the assessees herein are availing the benefit of exemption under Notification 1/93 dated 28.2.93. They availed deemed credit facility under Ministry's Order No.TS/36/94-TRU dated 1.3.94 even after crossing the exemption limit of Rs.75 lakhs, although under the above mentioned order, benefit of deemed credit was available only to rerollers, eligible to benefit and availing benefit of exemption under Notification 1/93. Hence demands were raised by denying deemed credit facility, demands were confirmed by the adjudicating authority by two separate adjudication orders; on appeal, the Commissioner (Appeals) set aside the demands and extended deemed modvat credit, relying upon the Tribunal's decision in the case of M/s Venkesteshwara Steel Industries vs. Commissioner of

Central Excise, Coimbatore reported in 1996 (65) ECR 103, the Revenue filed an appeal to the Tribunal, which vide Final Order No.901-902/98-NB dated 20.8.98, upheld the order in appeal on the basis of Tribunal's decision cited supra.

Hence, this application for reference.

3. None is present for the respondents when the matter is called; hence I heard Shri Panchatcharan, learned DR and perused the records.

4. I find that in the case of M/s. Digambar Foundry & Others Vs. CCE, Allahabad reported in 2000 (38) RLT 435 the Larger Bench of the Tribunal has held that deemed credit is not available after crossing the ceiling limit of clearances prescribed in the SSI Notification. I also notice that an application for reference on an identical issue has been allowed by me in the case of CCE, Chandigarh vs. United Iron & Steel Rolling Mills 2001 (127) ELT 780 following the Larger Bench decision. Since an identical question has already been referred, I refer the question of law as framed by the Revenue in this case for the considered opinion of the Hon'ble Punjab and Haryana High Court at Chandigarh. Registry is directed to draw up a statement of facts and forward the papers to the High Court.