Commissioner of Centrl Excise, Vs. Garware Nylons Ltd

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SooperKanoon Citation : sooperkanoon.com/21440

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-14-2001

Appellant : Commissioner of Centrl Excise,

Respondent : Garware Nylons Ltd

Judgement :

1. In the order impugned in this appeal, the Commissioner(Appeals)has held that the benefit of notification 217/86 would not be available to the Nylon Chips which were used by M/s Garware Nylon Ltd, the respondent to this appeal, in the manufacture of varieties of nylon yarn which were exempted from duty. He has however held that, in that situation, the manufacturer was entitled to take modvat credit of the duty paid on the inputs used in the manufacture of these chips, for utilisation in discharge of the duty payable on them. The appeal by the department questions this view on the ground that Modvat credit could not be extended with regard to past transaction, where a declaration, where a declaration under Rule 57G had already been filed.

2. The Tribunal has, by series of decision starting with its decision in Vivek Rerolling Mills vs CCE1994 (73) ELT 660 held that where the manufacturer initially did not pay duty on the goods in the belief that they were exempted, and was subsequently required to do so by the department, the fact that a declaration under Rule 57G was not filed would not stand in the way of his taking credit. This obviously for the reason that when the manufacture believed that the product manufactured by him is not liable to duty, there was no question of his having

consider taking modvat credit. Applying the ratio of this decision, we find no cause for interference.