

Commissioner of Central Excise and Vs. M/S. Biddle Intermediate P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-26-2001

Appellant : Commissioner of Central Excise and

Respondent : M/S. Biddle Intermediate P. Ltd.

Judgement :

1. This appeal from the Revenue was argued by Shri JM George, Shri M.A.Patel Consultant appeared for the respondents.

2. The proforma credit of Rs.1.21.182.60 claimed under Notification No.432/86 was denied in the original proceedings, on the observation that the benefit was not available where Napthelene was imported and cleared on payment of CVD. The Commissioner reversed this finding Hence this appeal. The grounds of appeal read as under : In the first case the permission was granted specifically for indegenious Napthalene only and not for imported Napthalene, so credit on imported Napthalene was not admissible under Rule 56A of C. Ex. Rules, 1944. As such the credit availed on such imported Napthalene is rightly denied in the OIO. The appellate authority has wrongly allowed the credit even such a case.

The assessee had not used the inputs viz. Napthalene falling under Sub-Heading No. 2707.40 for the manufacture of their final product viz. Dye Intermediate falling under Ch.29 but had removed them as such without the prior permission of the competent authority.

Therefore the credit taken on Napthalene under set off Noti. No. 432/86 was not admissible".

3. The issue stands covered in the Tribunal final Order No.C-I/1742/WZB/2000 dt. 11.5.2000 where the issue was the same and the importers were also the same. (Appeal No. E/898/95-Bom) The Tribunal had held that there was no objection to respondents taking proforma credit of the duty paid. We see no merit in the Revenue appeal on this ground. As regards the other ground Shri M.A. Patel submits that the same does not arise from the proceedings leading to the Commissioner's order and therefore this cannot become a ground in appeal. We find merit in this plea.

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