Commr. of Customs and Central Vs. M/S. I.D.L. Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : May-04-2001

Appellant : Commr. of Customs and Central

Respondent : M/S. I.D.L. Industries Ltd.

Judgement :
1. The Revenue has filed this appeal being aggrieved with the order passed by the Commissioner (Appeals). A short issue involved in the present appeal is as to whether the manufacture of Card Board boxes which the respondents are, receiving, were entitled to pay duty on the said boxes inspire of the exemption notification. The Revenue's contention is that inasmuch as the said boxes were exempted vide Notification 101/94, the manufacturer should not have paid duty. The duty so paid by the manufacturer is nothing but deposit with the Revenue and as such the respondent were not entitled to take modvat credit of the same.

2. I have heard Shri. V.K. Chaturvedi, ld.SDR and Shir S.C. Mohanty, ld. Advocate. I find that the issue is no more res-integra and is covered in favour of the respondent by a number of decision of the Tribunal. The latest decision on the issue is of West zonal Bench of the Tribunal in the case of Coomr. of Central Excise, vs. Nirma Chemicals Ltd. : 2000)122) ELT 809 wherein following the earlier decision in the case of Everest Furniture vs. CCEx., Cals. II : 1995 (80) ELT 91 (T) it has been held that the fact of exemption of goods does not means that the goods are not liable of duty at all. The manufacturer can pay duty notwithstanding such exemption. As such, the assessee who received such duty

paid goods would be entitled to take credit of the same. It is also seen that in the case of Commr. of Central Excise, Chandigarh Vs, J.K. Leatherite Ltd., Northern Bench of the Tribunal reported in 2001 (128) ELT 459 (T-Del), the Tribunal has rejected the Reference Application made by the Commissioner of Central Excise praying for referring the above question of law to the Hon'ble High Court.

3. In view of the forgoing, I do not find any merits in the Revenue's Appeal and rejected the same.