Commissioner of Central Excise Vs. Maximaa Systems Ltd.

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SooperKanoon Citation : sooperkanoon.com/24304

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-05-2001

Appellant : Commissioner of Central Excise

Respondent : Maximaa Systems Ltd.

Judgement :

1. The question for consideration in this appeal is whether the respondent manufacturer could avail of notification 1/93 in such a manner that it could pay the concessional rate of duty consequent on availing of modvat credit in respect of some products and simultaneously avail of full exemption of duty where modvat credit is not availed of for the others. Adjudicating on the notice issued to the manufacturer, the Asst. Collector had held that this course of action was not permissible and if the assessee avails of concessional assessment consequent upon making available the modvat facility, he is not entitled to take complete exemption from duty with regard to any product. On appeal from this order, the Commissioner (Appeals) took the view relying on the decision of the Tribunal in Swaraj Paints Industries vs. CCEAbhilash Rubber Products vs.

CCE 1991 (56) ELT 168 and that is permissible. This conclusion is challenged in this appeal.

2. The respondent is absent and unrepresented and by its communication of 3.7.01 made the following points. The modvat scheme is a self contained code and is governed by the relevant rules. The small scale exemption is a separate and independent code and the two cannot be interlinked. None of the rules relating

to modvat contain any requirement requiring full exemption for all the products.

3. The respondent's contention is untenable. We are not concerned with the rules relating of the modvat. We are concerned with the applicability of the notification. In doing so, we have to record the condition subject to which the exemption contained in the notification is availed.

4. The departmental representative cites before me the decision of the larger bench of the Tribunal in Kamani Foods vs. CCE 1995 (75) ELT 202 holding that full exemption under 175/86 will not be available to manufacturer for any goods made by him if he avails of modvat credit facility for any other specified goods. The relevant words in the notification 175/86 corresponds with those of notification 1/93. The ratio of this decision would apply to the facts before me. The order of the Commissioner (Appeals) therefore cannot be accepted.

5. The appeal is allowed and impugned order of the Commissioner (Appeals) set aside. The order of the Asst. Commissioner is restored.