

Commissioner of Central Excise Vs. M/S MomIn Steel Rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-27-2001

Appellant : Commissioner of Central Excise

Respondent : M/S MomIn Steel Rolling Mills

Judgement :

1. The respondent is absent and unrepresented despite notice. The appeal is taken up for disposal after waiving deposit with the consent of the departmental representative.

2. The issue before the Commissioner (Appeals) was whether Momim Steel Rolling Mills, the respondent to this appeal, could avail deemed modvat credit on rerollable material received by it after value of clearances had exceeded Rs 75.00 lakhs. The Assistant Commissioner had held that, since the order of the Government of India permitted such credit to assesseees the value of whose clearances did not exceeded Rs 75.00 lakhs, the benefit was not available. The Assistant Commissioner refused to consider the decision of the Tribunal in Sri Venkateswara Steel Industries vs CCE 1996 (86) ELT 446, which held that such an assessee was entitled to the credit even if the value of clearance exceeded Rs 75.00 lakhs, on the ground that the department had filed a reference to the Madras High Court out of the question arising out of this order. The Commissioner (Appeals) held that the operation of that order has not been stayed; its ratio was binding and applied it. Hence this appeal by the department.

3. The only ground in the department's appeal is that the trade notice issued by the Commissioner provides that the facility will not be available to units which have exceeded Rs 75.00 lakhs clearance. The departmental representative accepts that the trade notice has been issued in pursuance of the Board's order permitting deemed credit. I therefore decline to interfere.

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