

Commissioner of Central Excise, Vs. Shefjo Plastics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-30-2001

Appellant : Commissioner of Central Excise,

Respondent : Shefjo Plastics

Judgement :

1. This appeal by Revenue was argued by Shri Sarkar. Respondents were not present despite notice but earlier filed a cross-objection with an application for condonation of delay. That application was disposed off by a separate order.

2. The respondent was a small sector unit but had not got registered themselves with the Director of Industries. Proviso (2) to Notification No. 1/93 permitted such unregistered manufactures to clear their specified goods up to an aggregate value of Rs. 30 lakhs without payment of duty. The assessee, however, paid duty, too, modvat credit on the duty paid on the inputs and utilised the same. Show cause notices were issued alleging that in the face of the exemption given they could not have paid duty and therefore the credit availed by them was required to be reversed. After hearing the assessee the Assistant Collector directed reversal of credit amounting to Rs. 3,03,037/-.

Against this order the assessee filed an appeal. The Commissioner (Appeals) relying upon the Tribunal's judgment in the case of Everest Converters Vs. CCE 1995 (60) ECR 670 held that where the assessee had the right to choose one of the benefits and that their act of paying duty and claiming modvat credit even in the face of the exemption could not be faulted. On his allowing the appeal the

present appeal has been field by the Revenue.

3. In the appeal memorandum it is claimed that the Notification 1/93 was subsequently amended and only from that date the assessee would have the option not to clear them on payment of duty. On this ground it is claimed that the judgment of the tribunal were not applicable.

4. I do not find any merit in the claim of the department. The law as laid down by the Tribunal in the case of Everest Converters is not limited to the interpretation of the particular notification but stands as a permanent guideline. The said judgment has been followed thereafter by the Tribunal including in the case of Pascal Paramount Pvt. Ltd. Vs. CCE 1998 (98) ELT 199. I find the Commissioner (Appeals) was correct in applying the ratio of that judgment.

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