Narhari Engineering Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-02-2001

Appellant : Narhari Engineering

Respondent : Commissioner of Central Excise,

Judgement :

1. These applications relate to two appeals both arising out of the same order of the commissioner (Appeals). These are therefore disposed of by this common order.

2. On hearing both the sides on the applications I find that the issue can be finally decided. The appeals are therefore taken up for disposal on granting waiver of predeposit of penalty.

3. The appellants were operating under the Modvat scheme. They went out of the scheme and took benefit of alternate scheme. Later once again, they came back to the modvat scheme. On return they did not file any declaration under Rule 57G of the Central Excise Rules. The assistant commissioner disallowed the Modvat Credit on the ground that no declaration had been filed. He did this in the face of the 2 orders of the CEGAT in the case of Sure Safe Glass Works Pvt. Ltd. [1996 (83) ELT 328] and in the case of Wox Coolers Pvt. Ltd. [1993 (63) ELT 637.] The Commissioner Appeals upheld the orders citing tribunal decision. In the case of M/s. Signs India v. CCE Madras [1996 (82) ELT 65], hence the appeals.

4. The judgment which was relied upon by the learned commissioner appeals was passed by a single member bench. The first judgment which were cited before the Assistant Commissioner were also passed by single member. However the Wox Coolers judgment was delivered by a 2 member bench. In a later judgment also delivered by a two member bench namely, Curekraft chemicals (India) P. Ltd. [2001 (128) ELT 148.]; the judgment cited before the Assistant Collector were followed. In the case of Intel Electronics [2000 (125) ELT 644] was also the 2 member bench relied upon the Wox Coolers judgment. The same belief was held in the case of the Standard Detergents Pvt. Ltd. [1994 (76) ELT 136].

5. In view of the preponderance of the judgments in favour of assessees the single members judgment relied upon does not hold away. It is established that once a decleration under Rule 57G is filed the Assesses would continue to be in the scheme and would rely there upon, even where he had left the scheme for some time and later came back to the benefit thereof.