C.C.E. Vs. Ratlam Petro Products

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SooperKanoon Citation : sooperkanoon.com/27188

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-2002

Reported in : (2002)(80)ECC235

Judge : S Kang, a T V.K.

Appellant : C.C.E.

Respondent : Ratlam Petro Products

Judgement :

1. None appeared for the respondents in spite of service of notice.

Therefore, the appeal is being taken up in the absence of respondents.

2. Revenue filed this appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) held that option for availing the benefit of Notification 9/99-CE in the classification list is sufficient compliance to the conditions of the notification.

4. In this case, the proceedings were initiated for recovery of Rs. 7,997.00 on the ground that the respondents had not complied with the conditions specified in the Notification No. 9/99 whereby they are required to file a specific declaration. The adjudicating authority dropped the proceeding on the ground that the declaration, filed under Rule 173B of the Central Excise Rules, contains all the information as prescribed under the Notification No. 9/99. The revenue filed the appeal before the Commissioner (Appeals) and the Commissioner (Appeals) dismissed the same.

5. Now, in the present appeal, the revenue want to deny the benefit of notification on the ground that the declaration, filed under Rule 173B of the Central Excise Rules, was received on 5.4.99. Therefore, the respondents were entitled for the benefit of this notification only from 5.4.99. This issue was never raised by the revenue in the show cause notice nor before the lower authorities. Therefore, now the revenue cannot deny the benefit of notification on the new ground, which was never mentioned in the show cause notice nor agitated before the Commissioner (Appeals).CCE, Indore v. Busimen Offset Printers (P) Ltd. reported in 2001 (46) RLT 521 held that it is not necessary that option to avail the exemption under Notification 9/99 should be given in a separate letter and it can be exercised in the classification list. In view of the above discussion, we find no infirmity in the impugned order. The appeal filed by the revenue is rejected.