Stanlek Engineering Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-2002

Reported in : (2002)(105)LC762Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Stanlek Engineering Pvt. Ltd.

Respondent : Cce

Judgement :

1. We waive pre-deposit of duty and penalty and stay recovery thereof, and proceed to dispose off the appeal itself with the consent of both sides.

2. The brief facts of the case are that, the appellants are manufacturers of Motor parts falling under chapter 8536.90. They also manufacturer on job work for M/s. Lucas Indian Services. The appellants avail benefit of SSI exemption under Notification No. 8/99 dated 28.2.1999 for their own branded and unbranded goods and pay full duty on the branded goods manufactured for M/s. Lucas. The appellants cleared their own goods valued at Rs. 7,11,680/- during the period from 1.10.1999 to 29.2.1999 at 'Nil' rate of duty. The deptt. issued a show cause notice dated 31.3.1999 to the appellants alleging that, since the appellants are availing the benefit of modvat credit they ought to have paid duty on the clearance of their own goods, therefore duty of Rs. 68,321.29, is recoverable from them. The show cause notice was confirmed by the Assistant Commissioner vide order-in original on the grounds that appellants could not produce any record that they have not

utilised the inputs on which the modvat is availed, into the manufacture of their own final goods cleared under SSI exemption. He cited Boards letter No. 263/4/93-CX-8, circular No. 9/93 CX-8 dated 24.8.93 wherein simultaneous availment of modvat and SSI exemption was not permitted. A penalty of Rs. 2,000 was also imposed on the appellants. Lower appellate authority dismissed the appeal of assessee; hence this appeal.

3. On hearing both sides we find that the issue in dispute namely as to whether assessee can simultaneously avail of SSI exemption in respect of their own goods and avail modvat credit after paying duty, on branded goods manufactured on job work basis has been decided by the larger bench of the Tribunal in the case of Franco Italian Company Ltd. v. Commissioner of Central Excise Mumbai reported in 2000 (40) RLT 295, in which it was held that such simultaneous availment was permisible in law. Following the ration of above decision, we set aside the impugned order and allow the appeal.