

Mahan Plastics (P) Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-2002

Reported in : (2002)(81)ECC757

Judge : S T G.R., P Bajaj

Appellant : Mahan Plastics (P) Ltd.

Respondent : C.C.E.

Judgement :

1. The short point for determination in this appeal is whether in a case where there is an exemption notification the assessee has the option not to avail the exemption and pay duty.

2. The facts of the case in brief are that the appellant is engaged in the manufacture of footwear. The assessee the appellant availed themselves of modvat credit on inputs used in the manufacture of footwear and cleared footwear on payment of Central Excise duty. Part of Central Excise duty payment was made out of credit of duty taken on inputs. The duty paid was also recovered from the buyers of footwear.

In the impugned order learned Commissioner (Appeals) confirmed demand of Rs. 18,74,908.

3. Shri Naveen Mullick, learned Counsel submits that in the instant case the assessee the appellant opted for payment of duty on the final product taking

modvat credit on inputs. He submits that there has been consistent view of the Tribunal that the assessee has the option. In support of this contention learned Counsel submitted that in the case of J.V. Industries v. C.C.E., New Delhi 1997 (19) RLT 881, this Tribunal held that the assessee has option to either claim full exemption under notification or avail modvat credit benefits. He submits further that in the case of Mechciv Engineers v. C.C.E. 1997 (20) RLT 200 this Tribunal held " I hold that option to avail exemption under Notification No. 1/93 or to pay duty on the inputs and claim modvat credit rested solely on the assessee." Learned Counsel also submitted that in the case of Prominent Plastic Industries v. C.C.E.New Delhi, 1997 (20) RUT 312 this Tribunal held that the assessee has option to pay duty under Notification No. 14/92 and claim modvat credit of duty paid on inputs. Learned Counsel also submitted that the Apex Court in the case of HCL Limited v. C.C, New Delhi 2001 (130) ELT 405 (SC) held that where there are two exemption notifications that cover goods in question the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that notification is general in its terms and the other notification is more specific to the goods. Learned Counsel also submitted that similar view was taken by the Apex Court in the case of Collector v. Indian Petro Chemicals . Learned Counsel, therefore, submits that their case is fully covered by the above cases and decisions and, therefore, prayed that appeal may be allowed.

4. Shri Hitesh Shah, learned DR appearing for Revenue submits that in case there is an exemption the assessee has no option but to avail the exemption on the finished product and was not eligible to take CEN-VAT/Modvat credit of duty paid on inputs. He submits that it has been held in a number of decisions by the Apex Court that exemption notification issued has the effect as if it were part of the statute and hence manufacturer cannot pay duty on fully exempted goods. In support of this contention he cited and relied the following decisions: Learned DR submits that similar directions were issued by the Central Board of Excise & Customs in their Circular No. 2/91-CX. 3 dated 4.1.1991 after consulting the Ministry of Law. Learned DR submitted that since notifications are a part of the statute there was no question of any option.

5. We have heard the rival submissions. We have also perused the various case law cited and relied upon by both the parties. We also note that no doubt a "notification is a part of statute but the question is whether there is an option available to the assessee. We note that the question of option has been settled by the Apex Court in their judgment in the case of HCL Limited cited above. We note that this is later decision than the decision cited and relied upon by the learned DR. We further note that the Tribunal has been consistently holding that the assessee has the option. Following the ratio of the decisions cited and relied upon by the appellants and supported by the Apex Court in the case of Indian Petro Chemicals and HCL Limited we allow the appeal. Consequential relief, if any, shall be admissible to the appellants in accordance with law.

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