

Commissioner of Central Excise Vs. Pharma Cap and Harness Wire

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-14-2002

Reported in : (2002)(83)ECC18

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Central Excise

Respondent : Pharma Cap and Harness Wire

Judgement :

1. The common question for consideration in these appeals is whether each of the respondents could be permitted to pay duty on the goods manufactured and cleared by it and consequently takes credit of the inputs used in the manufacture of these goods. The notice issued to each of them proceeded on the footing that since the goods were exempted from duty in terms of Clause (2) of paragraph 1 of Notification 1/93, the question of payment of duty on them would not arise and hence Modvat credit could not be taken on the duty paid on the inputs. The Asst. Commissioner . confirmed the proposal in the notice. On appeal, the Commissioner (Appeals) found in favour of the assessees. Hence, these appeals by the Commissioner.

2. The departmental representative emphasises the ground in the appeal that the assessees could not pay any duty on goods which are exempted and was required, since they were exempted.

3. After hearing the counsel for Pharma Cap, we are unable to agree. As we pointed out, the exemption contained in Clause (2) of paragraph 1 of the notification is subject to the specification of the condition contained in paragraphs 3 and 4. Paragraph 3 makes the notification inapplicable if the aggregate value on clean noes by a manufacturer from one factory or more or from one factory by one or more manufacturer exceeded Rs. 2 crore in the preceding financial year.

Paragraph 4 makes the exemption inapplicable to goods which bear a brand name or trade name. It is possible for an assessee to conclude that they would not comply with either or both of the condition and, therefore, not to claim the exemption. In a situation where one or more conditions are not complied with, that would be improper. Such a conditional notification has to be distinguished from the exemption granted by unconditional notification in regard to which the department claims perhaps may have greater validity. We therefore find no ground for interference.

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