

Gamma Rays Transmission Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-22-2003

Reported in : (2003)(156)ELT914Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Gamma Rays Transmission Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Shri H.R. Shetty, learned Advocate for the appellants states that the appellants were a new manufacturer, who got themselves registered only in February, 1995. They failed to claim small-scale exemption under Notification No. 1/93 till 1-8-1995. The small-scale exemption has been denied to the appellants invoking the last paragraph of the exemption Notification No. 1/93 which reads as follows :- "Notwithstanding the exemption contained in paragraph 1 of this notification, a manufacturer shall have an option for not availing of the benefit of the exemption contained in said paragraph and to pay duty of excise at the rate applicable to the specified goods but for the exemption contained in the said paragraph 1, subject to the condition that such manufacturer shall pay duty at the rate applicable but for aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which such date of option falls." 2. The learned Counsel for the appellants states that it is not a case of exercise of option by the appellants but the exemption was not claimed on account of sheer ignorance. He cites the following case laws in support of the appellants' claim for

exemption :-Kopran Chemicals Co. Ltd. v. C.C.E. -1990 (48) E.L.T. 569 (Tribunal)Lokhandwala Construction Industries Ltd. v. C.C.E. Mumbai-II - 1997 (92) E.L.T. 703 (Tribunal)Commr. of C. Ex. & Cus., Surat v. Sharda Texturising Pvt. Ltd. - 2001 (131) E.L.T. 640 (Tri. - Mumbai) 3. Shri Ishwar Singh, learned J.D.R. appearing for Revenue supports the order passed by the lower authorities.

4. We have heard the rival submissions and perused the case records. It is seen that the appellants have not availed of the exemption right from the inception during the first two months of the financial year 1994-1995 as well as during the first four months of the financial year 1995-96. It is not a case where they were initially availing the small-scale exemption and they have subsequently opted out of the same.

Only when a manufacturer is availing an exemption, he can have an option of opting out of the same. In view of the fact that the appellants have not been able to avail the exemption out of ignorance, we are of the view that they cannot be denied the exemption invoking the last paragraph of the said exemption notification as they have not at any stage exercised an option for not availing the same.

Accordingly, we set aside the impugned orders of the lower authorities and remand the case back to the original authority for considering the claim of the appellants for small-scale exemption if they are otherwise eligible for the same. Appeal is allowed by way of remand.

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