Commissioner of Central Excise Vs. U.P. Asbestos Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-13-2003

Reported in : (2003)(160)ELT468TriDel

Judge : S Kang, a T V.K.

Appellant : Commissioner of Central Excise

Respondent : U.P. Asbestos Ltd.

Judgement :

1. Revenue filed this appeal against the adjudication order passed by the Commissioner of Central Excise. The issue involved in this appeal is in respect of benefit of Notification No. 60/91-C.E., dated 25-7-91 which exempts the goods containing 25 per cent or more fly ash from payment of Central Excise duty.

2. The Commissioner of Central Excise, in the impugned order, held that the respondents are entitled for the benefit of notification as they were following the procedure laid down by the revenue to show that their final product contains 25 per cent or more fly ash.

4. The contention of the revenue that the findings of the Commissioner of Central Excise show that the respondents had been maintaining the prescribed record is not based on any evidence. The Commissioner of Central Excise, in the impugned order, had not mentioned any record examined by her. The contention of the revenue is also that the respondents are claiming the benefit of notification,

therefore, onus is on the respondents to show that they were complying with the conditions laid down in the notification. The contention of the revenue is also that the Commissioner in the impugned order, had not mentioned whether the record had been verified so as to lead to conclusion of using more than 25 per cent fly ash in the final product.

5. The contention of the respondents is that the respondents had produced all the prescribed record before the Commissioner. Respondents also filed copies of the details of receipt of fly ash and monthly returns filed by them to the revenue in respect of fly ash used in their final product.

6. In this case the revenue is objecting to the finding of the Commissioner that the respondents were maintaining the prescribed record as per the provisions of the notification.

7. We find that the show cause notices were issued to the respondents on the ground that their final product did not contain fly ash.

Therefore, they were not entitled for the benefit of notification.

There was no allegation in the show cause notice that the respondents were not maintaining the prescribed record. Commissioner in the impugned order, after taking into consideration the chemical examiner's report, the record maintained by the respondents, results of pilot experiment and report of Dr. A.S.R. Rai, Prof. of Civil Engg. IIT, Kanpur gave a finding of fact. Revenue is not disputing the other factors taking into consideration by the Commissioner of Central Excise. The only contention of the revenue is that the Commissioner, without any evidence, held that the respondents had been found to be maintaining the prescribed record and the respondents in support of this finding produced copies of the records, which were produced before the Commissioner (Appeals), which show that they were maintaining the prescribed record. In view of the above discussion, we find no merit in the appeal and reject the same.