Commissioner of Central Excise Vs. Ate Enterprises Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-19-2003

Judge : S Kang

Appellant : Commissioner of Central Excise

Respondent : Ate Enterprises Ltd.

Judgement :

1. The respondents filed a written submission and made a request to decide the appeal on merits.

2. Heard the Ld. SDR. The respondents are engaged in the manufacture of excisable goods and were availing benefit of modvat credit in respect of the inputs used in their final product. The appellant received same inputs from small scale manufacturers and availed the Higher Notional Credit after 10 to 15 days from the receipt of the goods. Show cause notice was issued to the respondents for denying the credit. The adjudicating authority confirmed the demand. On appeal filed by the Respondents the Commissioner (Appeals) after relying upon the decision of the Tribunal in the case of M/s. Mysore Lc & Paint Works Ltd. reported in [1991 (52) ELT 590 (T)] allowed the appeal.

3. The contention of the Revenue is that as pre the trade notice issued by the Revenue the credit cannot be taken at later stage from the receipt of the inputs. The revenue relied upon the decision of the Supreme Court in the case of CCE v. Dhiren Chemical Industries [2002 (139) ELT 3 (S.C.)].

4. The respondents with the written statements relied upon the Tribunal in their own case wherein such situation the credit was allowed.

5. The Hon'ble Supreme Court in the case of Dhiren Chemical Industries held that if the understanding of the Board is otherwise than the decision of the Court the manufacturer cannot be held liable if they are working as per the under standing of the Revenue. The ratio of the decision is not applicable on the facts of the case in the present case.

6. In this case the respondents received the inputs from the small scale manufacturers therefore the respondents are entitled for the higher notional credit. The receipt of the goods are not disputed by the Revenue is objecting that the higher notional credit taken after 10 to 15 days from the date of initial credit taken. The respondents on the receipt of the inputs immediately taken the initial credit and after 10 to 15 days they are taken the higher notional credit as per trade notice relied by revenue only provides that notional credit can be taken only at the time of receipt of the inputs in the present case as the initial credit was taken immediately on receipt of the inputs and later on as the respondents were entitled for the higher notional credit the same was taken. In these circumstances I find no infirmity in the impugned order. The appeal is dismissed.