

Mona Plastics Vs. Commissioner of Central Excise

Mona Plastics Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/31139

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-06-2003

Judge : K Kumar, S T C.

Appellant : Mona Plastics

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. The issue in this appeal relates to interpretation of Para 2(i) appearing in the small scale exemption Notification No.9/99-CE dtd.28/02/1999. The appellants admittedly availed of the benefit of the said Notification upto 17/08/1999 during the financial year 1999-2000 and thereafter, opted out of the said notification. They claim that after opting out of the exemption notification, they are only required to pay the full rate of duty thereafter. However, by interpreting the aforesaid para 2(i) of the notification, the lower authorities have held that the appellants were not entitled to the exemption from the beginning of the financial year, once they opted out of the notification.

2. They hearing rival submissions and perusal of cases records, we find that the exemption under notification No. 9/99 is linked to value of clearances during a financial year. The said exemption is also subject to a number of conditions. One of such conditions in para 2(i) reads as follows:- "2. The exemption contained in this notification shall apply only subject to the following conditions, namely:- (i) a manufacturer who intends to avail the exemption under this notification shall exercise his option in writing for availing the exemption under this notification

before effecting the first clearances of specified goods and such option shall be effective from the date of exercise of the option which shall not be withdrawn during the remaining part of the financial year." 3. It is clear from the wording of the aforesaid condition that once having opted for the exemption, a manufacturer cannot withdraw from the same during the remaining part of the financial year. Withdrawing from the scheme would mean that one of the conditions stipulated in the notification would be violated. Consequence of such violation in our view is that the appellants would not be eligible for the exemption notification ab initio from the very beginning of the financial year as the exemption is financial year based.

4. The learned advocate for the appellants has brought to our notice the decisions of the Tribunal in the following two cases:-Kesia Pipes Pvt. Ltd. v. C.C.E. Chandigarh-I--2002 (51) R.L.T. 778Randhir Rolling Mills v. C.C.E. Allahabad--2000 (124) E.L.T. 1051.

5. The learned Jt.C.D.R. also points out that the financial year based small scale exemption like Notification No. 9/99 required a manufacturer to either avail of such exemption for the entire year or to pay the normal duty and avail modvat credit on the input duty. He points out that if a manufacturer is allowed to avail of clearance based exemption notification for some period of a financial year and then opt out of the same and utilize accumulated input duty credit, this will result in undue benefit to a manufacturer and cause aberration to the scheme. He also states that conditions of an exemption scheme require to be strictly applied.

6. After considering the rival submissions made in this regard, we are of the view that the appellants have two options. Either they can avail of the small scale exemption under notification No. 9/99 for the entire financial year or they can work outside the scheme of notification No.9/99 for the entire financial year if that is more beneficial to them.

In view of specific condition in Para 2(i) of the Notification they do not have adoption to work within the scheme of the said notification for party of the year and to work outside the scheme for remaining part of the year.

7. In view of the foregoing, we do not see any merit in the appeal and we dismiss the same. However, we allow the appellants to approach the original authorities with a request to allow them to continue under the exemption notification beyond 17/08/1999 till the end of the financial year and if such a request is made, the original authorities should sympathetically consider the same notwithstanding the fact that the appellants had earlier withdrawn from the scheme.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com