

Poly Processors Vs. Commissioner of Central Excise

Poly Processors Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/31635

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-18-2003

Reported in : (2003)(162)ELT230Tri(Mum.)bai

Judge : S T Gowri

Appellant : Poly Processors

Respondent : Commissioner of Central Excise

Judgement :

1. The appeal is against the order of the Commissioner (Appeals) confirming the denial by the Asst. Commissioner of the credit taken by the appellant on the ground that the duplicate copy of the invoice which was issued on 22-8-1994 was not coloured pink as provided by Notification 23/95 effective from 1-8-1995.

2. The appellant is absent and unrepresented and relies upon the decision of the Tribunal in Nexon Tubes Ltd. v. CCE 559. The departmental representative relies upon the decision of the single member of the Tribunal in Somani Iron and Steel - 1998 (100) E.L.T. 393. In Nexon Tubes v. CCE, the two member bench of the Tribunal at Calcutta held that the denial of the credit on the view that the duplicate invoice was not coloured pink was not justified because the invoices were issued between 1-8-1995 and 30-9-1995 shortly after the scheme was reasonably introduced and also found that the objection was hyper technical. In Somani Iron & Steel - 1998 (100) E.L.T. 393, it has been noted that while the notification requiring different for invoices came into effect on 1-8-1995, it was issued on 30-5-1995,

and had been given wide publicity to trade notice and published in journals. The Tribunal noted that the facility was introduced to prevent abuse of the Modvat scheme and therefore, confirmed the denial of the credit.

4. There are two directly contrary order on the issue. I, therefore have no alternative but to refer the matter to the Larger Bench for consideration of the issue and to hold which of the two is correct. The paper may be placed before to the President for constitution of a Larger Bench.

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