Commissioner of Central Excise Vs. Fire Equipment Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/32425

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-2003

Reported in : (2004)(165)ELT341Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Fire Equipment Pvt. Ltd.

Judgement :

1. The respondents herein, who are registered for the manufacture of textile hose pipes falling under chapter heading 59.07 of the schedule to the Central Excise Tariff Act, 1985, cleared part of their products to one M/s. Fibrotex who carried out rubber lining on the hose pipes received from the respondents on job work basis and then cleared the same directly to various customers of the respondents under the respondents' direction and at the respondents' sale price, on payment of duty. The respondents were also availing the benefit of Notification No. 175/86-CE dated 1-3-1986. The department proposed to club the clearances of the respondents and M/s. Fibrotex for the purpose of calculating the exemption limit under the notification and on this basis four show cause notices were issued covering the period from April 1991 to March 1993, proposing recovery of differential duty of Rs. 1,82,302.72. The Assistant Commissioner dropped the show cause notices vide order-in-original dated 1-6-1994 on the ground that there was no evidence on record to show that the job worker is a dummy unit of the respondents and that the transactions of the units are not at arms length. The

Commissioner (Appeals) rejected the appeal of the department, holding that there was no evidence to club the clearances of both the units existing as distinct SSI units; hence this appeal by the Revenue.

2. We have heard both sides. There is nothing on record to substantiate the plea of the Revenue before us that the respondents exercised full control over the job worker so as to club the value of the clearances of both units. The Revenue has not adduced any evidence to establish mutuality of interest between the respondents and the job workers, or any financial flow back between the two. We therefore find no reason to interfere with the order of the Commissioner (Appeals) and accordingly uphold the same and reject the appeal.