

Cce Vs. Diamond Wire Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-07-2003

Reported in : (2004)(91)ECC99

Judge : Author: S Kang

Appellant : Cce

Respondent : Diamond Wire Industries

Judgement :

1. The respondents filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).

2. The brief facts of the case are that the respondents are engaged in the manufacture of copper winding and bare copper wire. The respondents opted for availing the benefit of Notification No. 9/99-CE and started clearing the excisable goods as per the SSI Notification No. 9/99-CE with effect from 1.4.99. Thereafter from 1.9.99, the appellants started paying normal rate of duty after filing fresh declaration. The adjudicating authority held that once the respondent opted for availing the benefit of Notification No. 9/99-CE, for the same financial year, the respondents cannot go out of the purview of the notification. The respondents filed the appeal and the Commissioner (Appeals) allowed the appeal.

4. The contention of the Revenue is that as per the condition 2(i) of Notification No. 9/99-CE a manufacturer who opted to avail the benefit of the notification

cannot withdraw from the purview of the notification during the remaining part of the financial year.

5. The contention of the respondents is that after filing a fresh declaration started paying duty at the normal rate of duty, therefore, it cannot be said that they had withdrawn from the option for availing the benefit of Notfn. No. 9/99-CE.7. We find that the condition 2(i) of Notification No, 9/99-CE provides that "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of specified goods and such option shall be effective from the date of exercise of the option which shall not be withdrawn during the remaining part of the financial year." 8. As per the condition of the Notification when the manufacturer opted for availing the benefit with effect from 1.4.99 they are bound by the terms and conditions of the notification. We find that the Hon'ble Supreme Court in the case of Novopan India Ltd. v. CCE, Hyderabad, 1994 (4) RLT 323 after relying upon the decision in Hansraj Gordhandas v.H.H. Dave, 1969 (2) SCR 253 held that "such a Notification has to be interpreted in the light of the word employed by it and not on any other basis. This was so held in the context of the principle that in taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e. by the plain terms of the exemption." 9. In view of the above decision of the Supreme Court, it is evident that once a manufacturer exercises his option for availing the benefit of this Notification No. 9/99-CE then this assessee has no option to withdraw from the purview of the notification in the same financial year.

10. In view of the above discussion, the impugned order is set aside and the appeal of the Revenue is allowed.

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