Commissioner of Central Excise Vs. Bright Insulated Wires

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-07-2003

Judge : P Chacko, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Bright Insulated Wires

Judgement :
1. The appellants are an unregistered small-scale industrial unit engaged in the manufacture of certain excisable goods specified under Notification No. 1/93-CE dated 28/02/1993. Some of these goods were cleared under a brand name belonging to another person not eligible for the benefit of the said notification. Other unbranded goods were cleared during the period of dispute (April to December, 1993) on payment of duty at tariff rate by availing the benefit of modvat credit on inputs. The department took a stand that such an unregistered SSI unit could not pay duty on their initial clearances in a given financial year up to the value of Rs. 30 lakhs on their own volition as such clearances were totally exempted from duty under the said notification. Accordingly they issued a show cause notice to the party which has ultimately culminated in the present proceedings.

2. We have heard both sides. Learned DR, representing the Revenue in their appeal filed against the order of the Commissioner (Appeals), submits that it was mandatory for the SSI unit to operate under the notification and had no option to clear specified goods on payment of duty by availing the benefit of modvat credit

on inputs. On the other hand, the learned consultant for the Respondents submits that there is no such mandatory option for their unit and that they have only lawfully cleared their specified goods on payment of duty at tariff rate by availing the facility of modvat credit. He further submits that the issue has already been settled by decisions of this Tribunal as well as by Board's Circulars. A few decisions of the Tribunal have been cited by the Consultant. One of these decisions is Order No.CH/1910-11/WZB/2002 dated 14/06/2003 passed in appeal No. E/726/97.

This decision is to the effect that, under a conditional notification, an assessee who is unable to comply with the conditions of the notification cannot be compelled to operate thereunder and has the right to clear their goods on payment of duty at tariff rate. The Board's circular, referred to by the Consultant, is Circular No.88/Cx.3 dated 15/02/1988, which is to the effect that it is the option of the assessee either to avail of the full exemption available under SSI exemption notification or to pay duty leviable on the goods manufactured by them. If he chooses to pay the duty in spite of the goods being fully exempted, modvat credit of duty paid on inputs used in the manufacture of such products cannot be denied to him. This clarification issued by the Board squarely covers the present case in favour of the assessee. The Hon'ble Supreme Court also has upheld an identical view taken by this Tribunal in the case of Faridabad Tools, where an identical issue which arose under the predecessor-Notification 175/86-CE was considered and decided on in favour of the assessee.

3. As the issue is no longer res integra, having been settled in favour of the SSI unit, the present appeal of the Revenue fails and the same is dismissed.