

Cce Vs. Pycom Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-18-2003

Reported in : (2004)(113)LC783Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Cce

Respondent : Pycom Industries

Judgement :

1. The respondents herein are holders of Central Excise registration, availing facility of modvat. They have filed a classification list with effect from 1.4.1993 which was approved by the proper officer granting the benefit of simultaneous availment of modvat facility and SSI exemption under notification 1/93 dated 28.2.1993. This was objected to by the Revenue; however the Commissioner (Appeals), before whom the department preferred an appeal, held that since the lower authority, whose order was challenged by the Revenue, followed the earlier decision of the Commissioner of Central Excise (Appeals) in order-in-appeal No. GS/404/BI/92 dated 1.9.1992, no review of such classification was permissible. Hence this appeal before the Tribunal.

2. We find that the issue in dispute, viz., as to whether simultaneous availment of modvat credit of duty paid on goods and availment of concessional rate of duty in terms of SSI exemption are permissible, is no longer res integra as it has been settled by the decisions of the larger bench in the case of Franco Italian Co. Pvt.

Ltd. v. CCE, Mumbai-II and Ghaziabad wherein the Tribunal has held that payment of duty on branded goods and availment of credit thereof will not disentitle unbranded goods from the benefit of SSI exemption.

Following the ratio of the above decisions which have been followed by us recently in the case of National Power Scheme (appeal E/1503/97), we hold that simultaneous availment is permissible, uphold the impugned order and reject the appeal.

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