

Samtel Colour Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-19-2003

Reported in : (2004)(171)ELT101TriDel

Judge : S Kang, a T V.K.

Appellant : Samtel Colour Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The issue, involved in this appeal filed by Samtel Colour Ltd., is whether the benefit of Notification No. 36/96-Cus., is available to them in respect of the goods destroyed in fire.

2. Shri B.L. Narasimhan, learned Advocate, submitted that the demand of duty has been confirmed against the appellants on the ground that the goods, imported by them after availing the benefit of Notification No.36/96-Cus., had not been put to use in the manufacture of final products on account of fire accident in the factory; that the show cause notice was also issued to them by the Department for disallowing the Modvat credit on the ground that the inputs had been damaged in fire accident; that the Assistant Commissioner, under the Order-in-Original No. 9/99, dated 21-5-1999, accepted their contentions and dropped the disallowance of Modvat credit on the ground that the inputs had been used for the manufacture of excisable goods; that the impugned goods, which had been imported by them, had also been taken for use in the manufacturing process and, therefore, the

demand of duty cannot be confirmed in respect of the imported goods; that once the Assistant Commissioner has accepted that the inputs were used in the manufacture of final products for the purpose of admissibility of Modvat credit, no contrary findings can be given in respect of the same inputs for the purpose of admissibility of the concessional rate of Customs duty under Notification No. 36/96-Cus.

3. Countering the arguments, Shri O.P. Arora, learned SDR, submitted that the inputs were imported on payment of concessional rate of duty and the appellants are required to fulfil the conditions of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996; that as the goods had not been used in the manufacture of excisable goods, the appellants are not eligible for the benefit of concessional rate of Customs duty.

4. We have considered the submissions of both the sides. It has not been disputed by the Revenue that the impugned goods, imported by the appellants at concessional rate of duty, had been taken for use in the manufacture of excisable goods. Once the inputs had been taken for the manufacture of intended goods, it cannot be claimed by the Revenue that the inputs had not been used in the manufacture of excisable goods as the inputs during such manufacture were destroyed due to fire. We observe that the Assistant Commissioner, while dealing with disallowance of Modvat credit of the duty paid on the inputs, has clearly given his findings that "as soon as the goods are issued for the purpose of manufacture, they become in the nature of work in process and if they are damaged during this process, it is to be treated as manufacturing loss." The same reasoning is squarely applicable to the imported goods. We, therefore, allow the appeal filed by the appellants.