Commissioner of Central Excise Vs. Arihant Cotsyn Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-22-2004

Reported in : (2004)(167)ELT240TriDel

Judge : P Chacko

Appellant : Commissioner of Central Excise

Respondent : Arihant Cotsyn Ltd.

Judgement :

1. This appeal of the Revenue is against the order of the Commissioner (Appeals) dismissing the Department's appeal against the order of the original authority vacating a demand raised against the assessee in respect of used (empty) containers of modvatable inputs. The original authority had relied on the Board's Circular No. 449/15/99-CX., dated 23-3-99. The appeal preferred by the Department against the decision of the original authority was dismissed by the Commissioner (Appeals) by relying on the said circular as well as the Tribunal's judgment in the case of West Coast Industrial Gases Ltd. [1999 (108) E.L.T. 383]. Hence the present appeal of the Revenue.

2. No representation for the respondents despite notice. The DR reiterates the grounds of this appeal. One of the grounds is that the Hon'ble Supreme Court had admitted the department's appeal against the Tribunal's decision in the case of West Coast Industrial Gases Ltd. It has also been stated that the Department has filed a Civil Appeal with the Supreme Court against the Tribunal's decision on

similar issue in the case of CCE, Cochin v. Southern Refineries Ltd. [2001 (136) E.L.T.134 (Tribunal)].

3. A copy of Final Order No. A/1383/2003-NB(SM), dated 29-10-2003 passed by this Bench in the case of CCE, Chandigarh v. Pepsi Foods Ltd. [Appeal No. E/632/2003-NB(S)] is seen on record which shows that the appeal filed by the department against the Tribunal's decision in the case of West Coast Industrial Gases Ltd. has been dismissed by the Supreme Court vide [2003 (155) E.L.T. 11 (S.C.)]. It is further noticed that CBEC has issued another Circular on 6-6-2003 in view of the Supreme Court's decision in West Coast Industrial Gases Ltd. This circular has clarified that "no duty shall be payable and no reversal of credit is also warranted on waste package/containers used for packing inputs, on which credit has been taken, when cleared from the factory of the manufacturer availing Modvat/Cenvat credit." 4. The question whether duty of excise is payable on used containers of modvatable inputs stands settled as above, against the Revenue. The present appeal of the Revenue is, therefore, devoid of merit and the same is dismissed.