SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sun Dye-chem Vs. Cce

Sun Dye-chem Vs. Cce

SooperKanoon Citation : sooperkanoon.com/34184

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-17-2004

Reported in : (2004)(94)ECC491

Judge : A T V.K., P Bajaj

Appellant : Sun Dye-chem

Respondent : Cce

Judgement :

1. M/s. Sun Dye-Chem have filed the present appeal against the Order-in-Appeal No. 116/03 dated 19.6.2003, by which the Commissioner (Appeals) has confirmed the demand of Central Excise duty against them.

2. Shri Manjeet Singh Gupta, learned Consultant, submitted that the appellants, a SSI Unit manufacture food colours; that they filed a classification list effective from 1.4.93 claiming the benefit of small scale exemption notification, being unaware of the fact that the concessional rate of duty was not applicable to them in view of the new criteria mentioned in the Notification No. 1/93 dated 28.2.93; that under this Notification, the benefit of the notification was applicable to SSI units differently as under: "(i) to undertakings registered with the Director of Industries in any state or the Development Commissioner (Small Scale Industries) as a small scale industry, and (ii) to a factory other than a factory which is specified in (i) above; that the appellants, unaware of the implication of the Notification, continued to work under Modvat Scheme paying duty at concessional rate on their final products, though

they had become eligible to full exemption up to Rs. 30 lakh in view of the Notification No. 84/93 dated 4.5.93; that they came to know the various notifications only when they received a show cause notice dated 13.9.93 demanding differential duty for the period from 1.4.93 to 31.8.93; that in their reply dated 7.10.93, they mentioned that they were unnecessarily paying duty under Modvat Scheme and would be filing a revised classification list in order to claim full exemption from payment duty up to Rs. 30 lakh; that they filed a revised classification list on 11.10.93 claiming the benefit of Notification No. 1/93-CE as amended by Notification No. 84/93; that they had also surrendered the Modvat Credit taken by them during the financial year and also debited duty in respect of raw-material lying in stocks or lying used in semi-finished/finished goods; that, however, the Assistant Commissioner, under the Order-in-Original No. 222/99 confirmed the demand of duty and imposed a penalty on the ground that there is no provision for granting partial exemption while claiming Modvat Credit to units not registered with the Director of Industries; that the Commissioner (Appeals) also, under the impugned order, has rejected their appeal except reducing the quantum of duty on the ground that amended classification list filed on 11.10.93, cannot be approved with retrospective effect. The learned Consultant, further, submitted that the Commissioner (Appeals) has himself accepted the legal position in the impugned order that an assessee can opt out of Modvat Scheme by reversing the credit taken during the period and the credit in respect of raw-materials, semi-finished and finished goods lying in stock; that this has been complied with by them; that till approval of the classification list by the proper officer, all assessments are made on provisional basis and are finalised only after approval of the classification list; that the classification list, filed by them on 11.10.93, was only assertion for opting out of Modvat Scheme which could be done in time during the course of the financial year.

3. Countering the arguments, Sh. Vikas Kumar, learned SDR, submitted that it is not disputed by the appellants that initially w.e.f. 1.4.93, they had opted for the benefit of Notification No. 1/93 [Clause (1)(a)(i) of the Notification]; that the benefit of the Notification for the said clause is available only to a factory, which is registered as small scale industry; that as the appellants were not registered as small scale industry, they were not eligible for the benefit of the said exemption

under Clause (1)(a)(i) of the Notification No. 1/93; that they cannot change their classification list retrospectively which they are trying to do by filing the revised classification list in October 1993; that, accordingly, the duty confirmed against them is justified.

4. We have considered the submissions of both the sides. Notification No. 1/93-CE dated 28.2.93 provides exemption to a factory which is an undertaking registered with the Director of Industries or the Development Commissioner as a small scale industry. The rate of duty is specified on the basis of availment of Modvat Credit and the value of clearances. Sub-clause (2) of the Notification provided full exemption from payment of duty upto Rs. 10 lakh by any factory, which is not registered as SSI unit or which is registered with the Director General of Technical Development. Notification No. 1/93-CE was subsequently amended by Notification No. 84/93-CE dated 4.5.93 by which the exemption limit of Rs. 10 lakh available to units not registered as SSI with the Director of Industries or Development Commissioner (Small Scale Industries), was enhanced to Rs. 30 lakh. The facts, which are not disputed, are that the appellants opted for the payment of duty under Clause (1)(a)(i) of the Notification which provided for availment of Modvat Credit and payment of duty at concessional rate. This classification list was not approved by the Department and a show cause notice was issued to them in September 1993 on the ground that the benefit of Notification No. 1/93 is not admissible as they were not registered as small scale industry. A show cause notice, therefore, demanded the differential duty at the normal tariff rate instead of concessional rate of duty paid by them. It is the case of the appellants that when they came to know that they are not eligible for the benefit of Clause (1)(a)(i) of the Notification No. 1/93-CE, they reversed the Modvat Credit availed by them and opted for Clause (2) of the Notification. The Department is of the view that they cannot change their classification list retrospectively. We do not find any validity in the contention raised by the Revenue. The appellants have claimed the benefit of Clause (1)(a)(i) of the Notification No. 1/93 under the wrong impression that they were eligible for the same. Once it is held by the Department that they were not eligible for the benefit of the said clause, the Department cannot charge the duty from them at the normal tariff rate, if they are eligible for any other benefit either under this notification or any other notification issued by the Central Government. It is not the

case of the Department that the appellants are not eligible to the benefit of Clause (2) of Notification No. 1/93.

We also observe that the appellants are not changing the classification list on their own. They are changing the classification list as they are not eligible for the benefit of Clause (1)(a)(i) of the Notification. We, therefore, hold that the appellants are eligible for the benefit of Clause (2) of the Notification No. 1 /93 CE. We, therefore, set aside the impugned order and allow the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com