Vasundhara Containers and Pipes Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-12-2004

Reported in : (2004)(115)LC246Tri(Mum.)bai

Judge : J Balasundaram, S T C.

Appellant : Vasundhara Containers and Pipes

Respondent : Cce

Judgement :

1. The Commissioner of Central Excise has confirmed a demand of Rs. 10,01,374/- together with interest under Section 11AB of the Central Excise Act, on plastic granules arising in the course of manufacture of PVC suction hose pipes which are exempted from payment of duty under notification 14/92-CE dated 1.3.1992, and imposed a penalty of equal amount under the provisions of Section 11AC of the Central Excise Act.

3. We find that the conntention of the appellants that PVC compound is the product initially manufactured by them by conversion of plain PVC powder into coloured PVC powder with addition of additives, stabiliser etc. and not PVC granules, has not been controverted by the Revenue. In the light of this factual position which remains unrebutted, the claim of the appellants that the product on which duty has been demanded is eligible to the benefit of exemption from duty in terms of Sr. No. 3 of the table annexed to notification 14/92, has great force. Although the benefit of this notification was not claimed for the product in dispute,

and what was claimed before the Commissioner was the benefit of notification 84/94-CE dated 25.4.1994, which claim has been rejected on the ground that the period in dispute, viz. April 1992 to November 1993, is prior to the issue of notification 84/94, on examination of notification 14/92 we find that it covers the product in dispute and the condition set out against Sr. No. 3 of the table to notification 14/92, namely that no credit of duty paid on inputs used in the manufacture thereof has been availed under Rule 57A. admittedly stands fulfilled, as no duty has been paid on the product and therefore no question of taking credit of duty on the product arises.

4. In the light of the above discussion, we extend the benefit of notification 14/92-CE to the goods in dispute, set aside the impugned order and allow the appeal.