The Commissioner of Central Vs. Chandan Steels

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-18-2004

Judge : M T K.D.

Appellant : The Commissioner of Central

Respondent : Chandan Steels

Judgement :

1. This is a revenue appeal against the impugned order-in-appeal. The Commissioner (Appeals) vide his impugned order accepted the claim of the respondents that, in terms of letter No. TS/36/94-TRU dated 01/03/94, the respondents were eligible to take deemed modvat credit on the steel ingots and re-rollable materials.

2. The respondents were availing the benefit of exemption Notification No. 1/93-CE and paying concessional duty thereunder. After exhausting the concessional duty payment level, in respect of clearances up to Rs. 75 lakhs, the respondents paid full duty on the finished goods and continued to take the modvat credit on deemed basis in terms of the order of the Government dated 01/03/94 referred to above.

3. The dispute is as to whether the respondents could be termed to be the unit availing of the exemption under Notification No. 1/93-CE in respect of clearances beyond the slab value of Rs. 75 lakhs. En the impugned order, the Commissioner (Appeals) has made a distinction that, the unit could be said to be availing the

Notification No. 01/93/CE only while effecting clearances upto the clearance value of Rs. 75 lakhs. According to the interpretation of the revenue, the said unit ceased to be a unit availing of exemption under Notification 1/93-CE after crossing the limit of Rs. 75 lakhs for the reason that, such clearances exceeding the level of Rs. 75 lakhs, paid the normal duty of excise as applicable to any other unit working outside the exemption Notification No. 01/93-CE.4. The original authority had accepted the claim of the respondents, whereas on appeal from the department the Commissioner (Appeals) reversed the order. Hence, the instant appeal before the Tribunal.

6. The basic issue is the interpretation of the term unit availing exemption under Notification No. 1/93-CE. In this connection, I note that in terms of the stipulations contained in the said notification an option is required to be exercised by the manufacturer for availing the benefit of Notification in a financial year. Specific option is required to be exercised for payment of duty after availing modvat or availment of full exemption, etc.

7. The notification specifically provided that nothing contained in this notification shall apply if the aggregate value of the clearances of all excisable goods for home consumption had exceeded Rs. 300 lakhs in the preceding financial year.

8. It is apparent from this reading of the Notification that if the clearances during the preceding financial year exceed Rs. 300 lakhs only then the contents of Notification 1/93-CE, are not applicable.

This is not the case that the respondents had exceeded this eligibility limit in the previous year. Therefore, the provisions of Notification No. 1/93-CE will apply to them. The terms used in the circular are "unit availing of exemption under Notification 1/93". Therefore, availing of exemption under Notification No. 1/93-CE is a qualification, which is applied to the factory/unit and not to the individual clearances of excisable goods, beyond a certain value. (i.e.

above Rs. 50 lakhs) 9. Accordingly, it is obvious that the unit is clearly qualified to be a unit availing exemption under Notification No. 1/93-CE and the objection that it is not entitled for the benefit of deemed credit as prescribed in the order

TS/36/94-TRU dated 01/03/94 is not sustainable.

Consequently, the appeal fails and the same is rejected, and the order of the Commissioner (Appeals) is affirmed.