

C.C. Ex. Vs. Elegant Product

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-20-2004

Reported in : (2004)(172)ELT52Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : C.C. Ex.

Respondent : Elegant Product

Judgement :

1. Revenue is in appeal against the finding & the orders of the CCE (appeals) to the effect- "5 I have considered the evidence on record and submission made by the appellants. I find that in the impugned order the Assistant Commissioner has denied exemption under notification No. 38/97 dated 27.6.97 on the ground that the appellants fail to filed a letter of option for availment of the exemption under notification No. 38/97 dated 27.6.97 in respect of classification list No. 11/98-99 w.e.f 1.1.98. However, I find that earlier to his classification, the appellant filed declarations under Rule 173B w.e.f. 1.4.97 vide Sr.

No. 1/97-98 claiming therein exemption under notification 38/97 dated 27.6.97. It is not a case that the appellants thereafter gone out of modvat but confirmed to be in modvat scheme. I hold therefore that just because a separate letter of option was not pled for the claim of such an exemptions, that itself cannot be ground for denial of exemptions which is a right of the appellants until they opt only of such exemption & modval scheme.

In conclusion of aforesaid facts, the orders of the Assistant Commissioner is set aside and accordingly appeal is allowed." 2. Heard the DR respondents absent. Considered the material on record.

It is found- a) The appellants submit, in classification list Performa of erstwhile Rule 173B a declaration which has all the required details under-takings provided for by para 2 (1) & (ii) of notification 38/97 of the intention to avail the benefit of the said notification which they had availed in the previous year. The conditions of a option in writing to be exercised as per para 2 (i) does not prescribe a special format, for as to how the intention to opt and effect that intention in writing are to be made.

b) The notification or and the grounds do not refer to or indicate the requirements to be declared made in any Performa prescribed under ruled 233 empowering the Central Board of Excise & Customs, chief Commissioner or Commissioner in writing to issue supplementary instruction. Therefore there is no merit on the grounds taken. There is no infirmity found the order impugned the benefit availed could be availed.

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