Commissioner of Central Excise Vs. A.G.S. Industries

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SooperKanoon Citation : sooperkanoon.com/36178

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-09-2004

Reported in : (2005)(181)ELT126Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : A.G.S. Industries

Judgement :

1. The Revenue challenges the order of the Commissioner (Appeals) extending the benefit of notification 38/97 to the respondents herein, as according to the department, the condition under the notification of opting for the availment of the notification during the period in dispute, viz. 1-4-1998 to 19-8-1998, was not fulfilled.

3. We find that the benefit under the notification was claimed by the respondents under a letter of option on 8-7-1997. Such option was not withdrawn at any point of time. For the period in question, the assessees filed a classification declaration under which they had categorically mentioned that they were entitled to the benefit of notification 38/97. The only thing missing is a separate declaration covering the period in dispute under the notification itself.

Accumulative reading of the earlier declaration, its continuance by not withdrawing therefrom, and the classification declaration covering the period in dispute, would make it clear that the appellants were intending to avail of the benefit of the notification even from 1-4-1998 itself and the fact that the letter of option under the notification was filed only in August 1998 is not sufficient ground for disentitling them from the benefit thereof during the period 1-4-1998 to 19-8-1998. Therefore, we see no infirmity in the order of the Commissioner (Appeals) and accordingly uphold the same and reject the appeal.