Shamvik Glasstech Ltd. Vs. C.C. Ex.

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SooperKanoon Citation : sooperkanoon.com/36302

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-20-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Shamvik Glasstech Ltd.

Respondent : C.C. Ex.

Judgement :

1. Heard both sides in this matter. The learned Advocate fairly concedes that Rectification of Mistake application allowed on 14.1.04 specifically re-listed this matter to hear and decide the plea of limitation only and he does not press on merits of eligibility of credit which has been held against them.

a) Period of demand is August 91 to June 92 and show cause notice was issued on 27/3/95 and para 10 of this notice states - "10. From the foregoing para if is evident that the 'assessee' have deliberately and wilfully suppressed the fact of availment of modvat credit on spares, mandatory spars, air compressors and shrink wrapping machines on which they did not carry out any manufacturing activity and were not used in or in relation to manufacture of final products with an interest to evade Central Excise duty by incorrectly availing modvat credit on these goods, which were subsequently cleared without payment of Central Excise duty or reversing the modvat credit availed on these goods." "As regards the question of limitation, I find that the assessee had filed their declaration under Rule 57G of Central Excise Rules, 1944 claiming that spares / Mandatory spares are inputs for manufacture of final product glass having machines. They, themselves, have admitted that they are not used in the manufacture of final products. Thus, it is evident that they withheld material information knowingly with an interest to evade duty. So, the extended period is correctly invoked." c) The appellants contend that the so called admission made by them as arrived by the adjudicator was in statement recorded immediately after the detection by the officers and the legal positions thereon has not been given in detail. The said admission was made out of compulsion and that should not have been relied. This submission has force along with the plea of a bonafide belief on the part of the appellant that the credit was available to them therefore they made the declarations. The submission on how the base of 6 months limitations was not applicable in the facts as matter requires a denovo decision by the adjudicators since he has only relied upon the admissions made, which are being retracted. The matter is therefore required to be remitted to the Commissioner to re-hear the issue on the question of time bar and thereafter quantify the demands and penalty if any.