Commissioner of Central Excise Vs. Gupta Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-08-2004

Reported in : (2005)(179)ELT403TriDel

Judge : A T V.K., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Gupta Enterprises

Judgement :

1. The issue involved in this Appeal filed by Revenue is whether it is open to a manufacturer of excisable goods to avail the benefit of Notification No. 1/93-C.E., dated 28-2-93 or not.

2. Shri D.N. Choudhary, learned Senior Departmental Representative submitted that the respondents M/s. Gupta Engineers manufacture aluminium enamel winding wire which is eligible for exemption up to first clearance of Rs. 30 lakhs under Notification No. 1/93-C.E.; that as they had availed Modvat credit, a show cause notice was issued to them for disallowing the availment of Modvat credit; that the Deputy Commissioner under Order-in-Original No. 37/2003, dated 19-8-2003 vacated the show cause notice holding that the respondents had option to avail or not to avail the benefit of exemption Notification and they had made their intention known to the Department by filing a classification list with effect from 1-3-1993 wherein they had opted to pay the duty at the tariff rate; that on Appeal the Commissioner (Appeals) has also rejected the Revenue's Appeal relying upon the

Tribunal's Final Order Nos. A/691-697/97-NB, dated 11-6-1997. Learned Senior Departmental Representative, further, mentioned that under Para 2 of Notification No. 1/93, a small-scale unit even if it is not registered with Directorate of Industries in any State or Development Commissioner (Small Scale) was allowed to avail the benefit of exemption up to clearance of Rs. 10 lakhs; that thus this exemption was available to the assessee without any condition and therefore it was obligatory on their part to avail of the exemption from payment of duty; that consequentially they were not eligible to avail of the Modvat credit of the duty paid on the inputs in terms of the provisions of Rule 57C of the Central Excise Rules, 1944. He relied upon the decision of the Supreme Court in the case of CCE, Meerut v. Modi Rubber Ltd., 2001 (133) E.L.T. 515 (S.C.) wherein it has been held that "the exemption Notification pre-supposes that the duty is otherwise payable on finished product specified therein. There is no question of applying this Notification (Notification No. 95/83) to the finished products (in this case, tyres, tubes and flabs) if they are not subjected to any duty." Learned Senior Departmental Representative therefore emphasizes that if the final product is exempted from payment of duty, the question of availing the Modvat credit docs not arise.

3. On the other hand, learned Advocate, Shri V.K. Gupta, reiterated the finding as contained in both the Orders passed by the lower authorities and he also relied upon the decision referred to in the Order-in-original such as CCE v. M/s. Bhog Polymers, 2001 (128) K.L.T.142 and M/s. Pascal Paramount Pvt. Ltd. v. CCE, New Delhi [1998 (98) E.L.T. 199 (Tri)].

4. We have considered the submissions of both the sides. Notification No. 1/93 provides exemption from payment of duty subject to various conditions specified in the said Notification. The notification was available to a unit which is registered as Small Scale unit either with Directorate of Industries or with the Commissioner of Small Scale Industries, However, Notification further provided that even if an industry is not registered with the Directorate of Industries or with the Commissioner of Small Scale Industries, the benefit of Notification up to the value of clearance of Rs. 10 lakhs will be available. This provision only makes it possible for small-scale unit which is not registered as such to avail the benefit of small-scale exemption up to the limit of Rs. 10 lakhs only. There are other conditions

specified in the Notification which are to be complied with by the assessee before the exemption under the Notification can be availed of. As such there is no force in the submissions of the learned Senior Departmental Representative, that the benefit was available to the respondents unconditionally. Notification compel the assessee to avail of the benefit of Notification on fulfilment of the conditions of the Notification, We, therefore, find no merit in the Appeal filed by Revenue which is rejected.