

**Cear Electronics Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-22-2005

**Reported in :** (2005)(187)ELT229TriDel

**Judge :** A T V.K., P Bajaj

**Appellant :** Cear Electronics

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The issue involved in this Appeal filed by M/s. Cear Electronics is whether they can avail exemption under small sale exemption Notification in respect of goods manufactured in one of their factory and clear the goods at concessional rate of duty after availing Mod-vat credit in respect of goods manufactured in their second factory.

2. Shri R. P. Singh, learned Consultant, submitted that the Appellants in their own factory at Kirti Nagar, manufacture excisable goods and avail full exemption from payment of duty under Notification No.1/93-C.E., dated 28-2-93; that they are running another factory at West Patel Nagar, New Delhi where they avail Modvat credit of the duty and clear the goods in the brand name of others on payment of excise duty at normal rate; that the issue stands settled by the decision of the Tribunal in the case of CCE, Ludhiana v. Munjal Gases and Intertec v. CCE, Ghaziabad [2001 (127) E.L.T. 609 (Tri.)]. On the other hand Shri H.C. Verma, learned Departmental Representative, submitted that the benefit of exemption

under Notification No. 1/93 from payment of whole of duty is not available to the Appellants as undisputedly they were availing the Modvat credit of duty paid on inputs in their factory at West Patel Nagar; that thus they cannot avail both the benefits together under Notification No. 1/93.

3. We have considered the submissions of both the sides. It is not in dispute that the respondents are having two units and they are availing exemption from payment of whole of duty in one unit and are availing facility of Modvat credit in another unit. Merely because of the fact that the Modvat credit is availed of by the Appellants in their West Patel Nagar unit, they will not become ineligible for availing the exemption from payment of duty in respect of the goods manufactured in their Kirti Nagar unit. This was the view held by the Tribunal in the case of Munjal Gas (supra) wherein it has been held that "the words "by a manufacturer, from one or more factories" have been mentioned in Notification No. 1/93 C.E., for the purpose of computing the value of clearances in the preceding financial year. These words do not debar respondents from availing of exemption from payment of duty in one unit while availing of Modvat credit in the other unit." We also observe that in the said decision of Munjal Gases, Tribunal has also noticed that the issue had been decided earlier vide Final Order No.500-501/99-C, dated 21-6-99 in the matter of M/s. Munjal Gases themselves and no order or decision reversing the said decision has been brought on record by the Revenue. Thus, following the earlier decision, we set aside the impugned order and allow the Appeal.

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