

**Shalimar Paper Mills (P) Ltd. Vs. Cce**

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

**Decided On :** Apr-20-2005

**Reported in :** (2005)(102)ECC313

**Judge :** S Kang, Vice, N T C.N.B.

**Appellant :** Shalimar Paper Mills (P) Ltd.

**Respondent :** Cce

**Judgement :**

1. Heard both sides. The appellants filed these appeals against the Orders-in-Appeal passed by the Commissioner (Appeals) whereby the benefit of Notification No. 5/99-CE was denied on the ground that the appellants were availing the benefit of Notifications No. 9/98-CE as amended.

2. The contention of the appellants is that as per condition No. 15 of Notification No. 5/99-CE, the exemption shall not be applicable to a manufacturer who avails of the exemption under the Notifications No.8/98-CE dt. 2.6.98 and 9/98-CE dated 2.6.98.

3. The contention of the appellant is that the benefit of Notification No. 5/99-CE is not available to the manufacturer who was availing the benefit of both the Notifications. No. 8/98-CE and 9/98-CE. The contention is that the appellant was availing the benefit of Notification No. 9/98, therefore, the benefit of Notification No.5/99-CE cannot be denied to the appellant.

4. The contention of the Revenue is that if a manufacturer is availing the benefit of either Notification No. 8/98-CE or 9/98-CE, the benefit of Notification No. 5/99-CE is not available.

5. The Revenue relied upon the provisions of Notification No. 9/98-CE wherein it has been specifically mentioned that the manufacturer shall not be permitted to change this option in favour of Notification No.8/98-CE dated 2nd June 1998, during the remaining part of the financial year. The contention is that in such a situation any manufacturer cannot avail the benefit of both the Notification Nos. 9/98-CE and 8/98-CE. The contention of the Revenue is also that both the notifications are in respect of small scale exemption, therefore, a manufacturer can avail of the benefit of one Notification only. The Revenue has also submitted that Condition No. 15 of Notification No.5/99-CE is that the benefit of this notification is applicable to a manufacturer who claim the benefit of Notification No. 8/98-CE or Notification No. 9/98-CE.6. In these cases, the benefit of Notification No. 5/99-CE was denied on the ground that they were not fulfilling the condition No. 15 of the said Notification. For ready reference, Condition No. 15 is reproduced below: "15. The exemption shall not be applicable to a manufacturer of the said goods who avails of the exemption under the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 8/98-CE dated 2.6.98 and 9/98-CE dated 2.6.98." Admittedly, the appellants are availing in the same financial year the benefit of small scale exemption Notification 9/98-CE as amended. Only the appellant's contention is that the benefit of Notification can be denied to a manufacturer who avails the benefit of both the Notifications 8/98-CE and 9/98-CE. We find that as per the provisions of Notification No. 9/98-CE, the manufacturer has no option to change in favour of Notification No. 8/98-CE during the financial year. In this situation, a manufacturer who is availing the benefit of Notification No. 9/98 cannot avail of Notification No. 8/98-CE simultaneously. In this factual position, we find no merit in the appellants contention that Notification No. 5/99-CE can only be denied to a manufacturer who is availing both the Notification 8/98-CE and 9/98-CE. As the appellants were availing the benefit of Notification No. 9/98-CE as amended, therefore, the benefit of Notification No.5/99-CE is rightly denied.

7. In view of the above, we find no merit in the appeals. The same are dismissed.

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