Punjab General Manufacturing Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-11-2005

Judge : S Kang, Vice-

Appellant : Punjab General Manufacturing

Respondent : Cce

Judgement :

2. Common issue involved in both the appeals, therefore, are being taken up together.

3. The brief facts of the case are that the appellants filed declaration for availing the benefit of Notification No. 16/97-CE dated 1.4.1997 and during the same financial year another notification was issued by the Revenue i.e. 38/97-CE. Under this notification Modvat credit facility can be availed for finished products and finished products are to be cleared at concessional rate of duty, up to Rs. 50 lakhs. The appellant opted for availing the benefit of Notification No.38/97-CE during the same financial year. A show-cause notice was issued to the appellant for denial of credit on the ground that the appellants are not entitled for the benefit of Notification No. 38/97-CE, as no proper declaration was filed by them as they are working under the small scale exemption notification, the appellants are not entitled for the credit. The adjudicating authority confirmed the demand after denying the credit. The appellants filed appeals and Commissioner (Appeals) in the impugned order after relying upon the Board's Circular dated 14.9.1997 held that appellant can opt out Notification No.16/97-CE but to avail the Modvat with

higher concessional rate, but to avail the benefit of Notification No. 38/97-CE declaration is to be filed. As no declaration has been filed by the appellants for availing the benefit of Notification No. 38/97-CE. The benefit of this notification is not admissible to the appellant and denied the benefit of Modvat credit.

4. The only contention of the appellant is that while denying the benefit of Notification No. 38/97-CE, the Revenue can only demand duty at the appropriate tariff rate denying the benefit of this notification. The appellants are liable to pay duty at the tariff rate and they are entitled for the benefit of credit. The contention is also that and in view of the present impugned order the credit is denied as no declaration is filed for availing the benefit of Notification No.38/97-CE and they are also liable to pay duty at tariff rate. In these circumstances, the contention is that the credit cannot be denied.

5. The contention of the Revenue as per the provisions of Notification No. 38/97-CE the assessee has to file declaration and no declaration has been filed, therefore, they are not entitled for the benefit of this Notification. The Revenue relied upon the decision of the Tribunal in the case of Karm Sanitations v. CCE 6. In reply, the contention of the appellant is that the facts of the case in the case of Karm Sanitations (supra) are different. In that case, the Tribunal had gone by the presumption that the assessee cannot opt out of the Notification No. 16/97-CE and by holding so the credit has been denied. In the present case, the Commissioner (Appeals) held that the appellants can opt out of the Notification No. 16/97-CE in view of the board's circular dated 14.7.1997 and this finding is not challenged by the Revenue, therefore, the ratio of the above decisions not applicable in the present case.

7. In these appeals, the benefit of Notification No. 38/97-CE is denied to the appellant on the ground that no declaration has been filed by the appellant, therefore, they are not entitled for the benefit of this notification. The Revenue relied upon the decision of Karam Sanitations (supra) in that case the Tribunal after considering the provisions of Notification No. 16/97-CE and provisions of Notification No. 38/97-CE held that the assessee once opted for small scale exemption Notification i.e. 16/97 they could not out in the same financial year and

they were barred from taking the Modvat credit of the duty paid on inputs till the aggregate value of the clearances exceed Rs. One crore.

In the present case the Commissioner (Appeals) in the impugned order in para 8.2 and 8.3 after relying upon the board's circular No.B-41/2/97-TRU dated 14.7.1997 held that appellant can opt out of Notification No. 16/97-CE but to avail the Modvat with higher concessional rate they had to specifically opt for Notification No.38/97-CE and to file the necessary declaration required under this notification. The Commissioner (Appeals) further held that as no declaration has been filed by the appellant, therefore, they are not entitled for the benefit of this notification and this finding is not challenged by the Revenue. In view of this finding as the benefit of Notification No. 38/97 is being denied, the appellant has to pay duty in respect of the finished goods at the tariff rate. In this situation the denial of Modvat credit is not sustainable and set aside. The appeals are allowed as indicated above.