Basant Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-02-2007

Reported in : (2007)(116)ECC372

Judge : S Kang, Vice

Appellant : Basant Industries

Respondent : Cce

Judgement :

1. Common issue is involved in these appeals, therefore, are being taken up together.

2. The appellant filed these appeals against impugned order whereby demand was confirmed after denying the small scale exemption notification and penalties were imposed.

3. The appellants are engaged in the manufacture of CI castings, ingots, railway wagon components, D.E. parts, generating set, A.C.generator and diesel engine. The appellants were availing the benefit of small scale exemption Notification No. 1/93-CE in respect of certain goods and were cleared without payment of duty simultaneously availing credit in respect of duty paid on inputs and clearing the goods on payment of duty. The Revenue was of the view that the appellant cannot availed simultaneously exemption under Notification No. 1/93-CE on same goods and Modvat facility on other goods and pay duty. I find that this issue is now

covered by the decision of Hon'ble Supreme Court in the case of CCE v. Ramesh Food Products favour of the Revenue. The Hon'ble Supreme Court held that manufacturer cannot avail simultaneously the benefit of SSI notification and availed credit in respect of other goods. In these circumstances, I find no infirmity in the impugned order whereby benefit of small scale exemption notification was denied 4. The contention of the appellant is that the duty was demanded after taking into consideration the value of clearance and benefit of cum duty price was not allowed. The contention is that the appellants are entitled for the cum-duty price, in view of the decision of Hon'ble Supreme Court in the case of CCE v. Maruti Udyog Ltd. 5. The appellant also pleaded that they are entitled for credit on production of necessary documents in respect of the inputs which are used in the manufacture of goods on which duty is confirmed. The appellant also pleaded that they had made export of manufactured goods and regarding which the demand of duty is not sustainable. The appellant also pleaded that prior to the decision of Hon'ble Supreme Court in the case of Ramesh Food Products (supra) the Tribunal in the case of Faridabad Tools Pvt. Ltd. v. CCE held that a manufacturer can avail small scale exemption notification simultaneously in respect of same goods and clear the goods on payment of duty after availing the benefit of Modvat credit, therefore, the appellants are not liable for any penal action.

6. I find that the Hon'ble Supreme Court in the case of Ramesh Foods overruled the decision of the Tribunal in the case of Faridabad Tools Pvt. Ltd. The Tribunal in the case of Faridabad Tools (supra) held that a manufacturer can avail simultaneously the benefit of exemption notification and cleared the goods on payment of duty also, therefore, it cannot be said that the appellant availed benefit of small scale exemption notification to evade payment of duty, therefore, the imposition of penalty is not sustainable and set aside.

7. The Hon'ble Supreme Court in the case of Maruti Udyog Ltd. (supra) held that assessee is entitled for benefit of cum duty price in case the duty has been confirmed after taking into consideration the sale price of the goods, therefore duty is to be recalculated after granting the benefit of cum-duty price. The appellant also entitled for the benefit of Modvat credit in respect of duty paid on inputs used in the manufacture of goods on which duty confirmed on production of necessary

duty paying goods and the duty is to be requantified after verifying the export made by the appellant, The appeals are disposed of as indicated above.