Collector of Central Excise Vs. Wox Coolers Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-13-1993

Reported in : (1994)(50)LC20Tri(Mum.)bai

Judge : J T R., P Desai

Appellant : Collector of Central Excise

Respondent : Wox Coolers Pvt. Ltd.

Judgement :

1. The reference application is in respect of the order No. 1655/92-WRB dated 4.9.1992, wherein, this Bench allowed the appeal of the respondents and set aside the order of the Collector. The undisputed factual position in the aforesaid case is that the respondents filed a modvat declaration on 18:1.1988 and there is no allegation that some new inputs were received in April, 1988, when they started availing the benefit of small scale exemption up to Rs. 15 lakhs. Hence, availment of modvat credit during the period when they were clearing the goods valued up to Rs. 15 lakhs was kept under suspension. Thereafter they filed classification list on 26.4.1988. However, when they started paying duty after crossing the slab of Rs. 15 lakhs, they had taken modvat credit on the same inputs already declared on 18.1.1988 and the Department objected to this on the ground that a fresh declaration was called for. This Bench held that they had already filed a declaration and no new inputs are sought to be brought in and they have also intimated it to the Department vide classification list filed on 26.4.1988 that they were not availing modvat credit, till the clearances crossed Rs. 15 lakhs. In view of

this, the questions framed by the Collector viz., whether the declaration under Rule 57G of Central Excise Rules was required to be filed before the jurisdictional Assistant Collector of Central Excise and whether the extended period of limitation was correctly invoked, are totally mis-placed. This is not a case of non-declaration. The admitted position is that there is a declaration. The same inputs have been brought in covered by the declaration filed. There is no bar for the small scale unit to opt out of the modvat scheme during the first slab of clearances and commencing the availment of modvat after crossing the slab. In view of this, the original declaration filed cannot be ignored. Hence, the question of law does not arise. We also hold that the fact that they were taking the modvat benefit from 26.4.1988 was also made known to the Department vide their classification list filed on that date. Hence, there cannot be any suppression and on that ground held that the demand is time barred. This fact being not disputed, no question also arises on that ground. Hence, we dismiss the Reference application.