

Future Innovations P. Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-12-1994

Reported in : (1994)LC193Tri(Delhi)

Appellant : Future Innovations P. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is a stay application filed with reference to the order of Collector (Appeals) Chandigarh dated 16-12-1992.
2. Ld. Advocate stated that in this case they have cleared goods on payment of duty from their modvat account.
3. Both inputs and outputs are covered by the Modvat Scheme and their declaration and there is no dispute about it.
4. The Department is seeking to deny the credit and recover the amount on the ground that the final products were exempted under Notification 53/88 during the relevant period.
5. It was their contention that during that time a practice, approved by Department, was prevalent, according to which a Licensee could pay voluntarily duty even in respect of products which were otherwise exempted. Accordingly, in their classification list, they had intimated that they will be availing modvat and the same had been approved by the Asstt. Collector. It was, therefore, incorrect on

their part to treat it as an voluntary payment in the nature of deposit only and to deny the benefit on that account.

6. In this connection, they would like to draw attention of the Bench to the Trade Notices Nos. 10/91 dated 14-2-1991, 59/91 dated 30-7-1991 and 77/91 dated 18-12-1991. These Notices refer to the above practice and the Department wants to proceed on the basis of their changing views and recover the amount by applying the latter view with retrospective effect. Hence the prayer.

7. Ld. DR stated that admittedly the product was exempted under Notification and according to the Rules, the modvat credit could not be availed of on exempted final products.

8. Of course there was some exemption notification and for some time the assessee used to pay voluntarily also. But this option of voluntary payment could be exercised only in case of SSI units availing value based exemption and it was not a general permission.

9. We have considered the above submissions. We observe that admittedly the duty was paid on the final product and the modvat credit was taken only for the purpose of paying this duty; and the appellants had filed the Classification lists indicating that they will be availing modvat credit.

10. The question as to whether the assessee could voluntarily pay duty in respect of goods exempted by a Notification and implication thereof are arguable on merits. Similarly implications of these trade notices could also be taken into account only in the above context. At this stage the Trade Notices produced before us themselves show that there was some practice of voluntary payment of duty on exempted goods was prevailing for some time and the Department has been shifting its stand from time to time. We feel that the assessee should not be put to hardship on account of such shifting stands and the balance of convenience is in the circumstances in their favour. We therefore, waive the pre-deposit of the amount in question and stay its recovery during the pendency of the appeal.