

Amar Machine Tools (P) Ltd. Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-24-1995

Reported in : (1995)(80)ELT595TriDel

Appellant : Amar Machine Tools (P) Ltd.

Respondent : Collector of C. Excise

Judgement :

1. The matter was initially mentioned by the Learned Counsel, Mrs.

Archana Wadhwa saying that this matter was originally listed for 22nd March, 1995 and had been got adjourned on her request to 30th March, 1995. The Learned Counsel submitted that on 30th March, 1995, she may not be in a position to appear before the Tribunal. The Learned Counsel pleaded that the matter lies in a short compass and could be disposed of on the basis of precedent order and the Bench if so inclined it could be taken up today itself.

3. With the consent of the parties, we have taken up the stay as well as the appeal. We find on hearing both the sides that the issue in this appeal is relating to the availment of MOD VAT Credit Facility as well as the concessional rate of duty by a small scale unit under Notification No. 175/86. As has been submitted by both the sides before us, we find that this issue is covered by a precedent decision of the Tribunal in his Order No. E/03/94-B1, dated 28-12-1993 in the case of the very same appellants. In that order the Tribunal had followed the precedent decision of the Bench in the case of Jai Industries and Ors.

v. Collector of Central Excise, reported in 1993 (68) E.L.T. 475. In the Jai Industries case the Tribunal had held that there is nothing in Notification 175/86 which makes it obligatory to avail the benefit of MODVAT Credit even if a declaration has been filed to that effect. The Tribunal held that the mere fact that the appellants paid duty at the concessional rate does not mean that they would be disentitled to the benefit of para a(ii) of the Notification. As has been held by the Tribunal in the appellants' own case earlier, this judgment of the Tribunal in Jai Industries fully covers the present case. Following that ratio the present appeal is also accordingly allowed.

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