

Abs Plastics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-28-1996

Reported in : (1997)(89)ELT631Tri(Mum.)bai

Appellant : Abs Plastics

Respondent : Commissioner of Central Excise

Judgement :

1. Arising out of Order-in-Appeal No. M-1212/BD-791/85, dated 25-4-1986, the Registry issued a notice to the appellants for not furnishing a copy of the order-in-original. During the hearing, the copy of the order-in-original was produced by the learned Consultant Shri R. Shukla. He pleaded that the appeal may be disposed of because the point in dispute has since been clarified by the Board, vide CBEC Circular No. 81/88-CX. 6, dated 6-12-1988. Hence, with the consent of both sides, the appeal was taken up for disposal. The appellants claimed benefit under Notification No. 203/82, dated 27-11-1982. Under this notification, incentive credit is being given for excess production in respect of the goods cleared from the factory for home consumption during the period from 1-3-1982 to 28-2-1983, in excess of the Base period clearances. There is no dispute about the eligibility of the incentive credit in respect of the excess over the base period clearances. As per the notification, credit of an amount equal to 1/5th of the duty of excise paid on such excess clearances is to be given.

The appellants are bringing certain inputs classifiable under Tariff Item 68 and were availing of the benefit under Notification No. 201/79.

As per this notification duty paid on the inputs so received is given as credit in RG 23 Register, which amount can be utilised for payment of duty on the final product. The Asstt. Commissioner took into account only the duty of excise duty paid through PLA and ignored the duty payment by way of debit in RG 23 Register, on the ground that the effective duty paid has to be calculated taking into account the exemption availed of under Notification No. 201/79. This objection was upheld by the Commissioner (Appeals). Hence, the present appeal.

2. After hearing both the sides, we find that as per Explanation (4) to the Notification No. 283/82-C.E., dated 27-11-1982, effective rate of duty leviable under Central Excise Act means the rate of duty specified in the first schedule of the Central Excise Act read with any notification issued under Sub-rule I of Rule VIII of Central Excise Rules, other than a notification providing for any exemption for giving credit with respect to or reduction of duty of excise on such goods equal to, any duty of excise already paid on the raw material or component parts used in the production of such goods.

3. Viewed in the context of the aforesaid exemption, the objection taken by the lower authorities to the effect that the credit can be given only in respect of duty paid through PLA is not sustainable. We also take note of the Boards's instruction clarifying the position to the same effect in the circular dated 6-12-1988. Hence the appeal is allowed with consequential relief, as per law.

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