Jayavarma Knitters Vs. Commissioner of Central Excise, Coimbatore

Jayavarma Knitters Vs. Commissioner of Central Excise, Coimbatore

SooperKanoon Citation : sooperkanoon.com/943867

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Feb-28-2011

Judge : The Honourable Ms. Jyoti Balasundaram, Vice-President &Amp; the Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal No.ST/S/205/10 & ST/353/2010 [Arising out of Order-in-Appeal No.29/2010-ST dt. 19.3.

Appellant : Jayavarma Knitters

Respondent : Commissioner of Central Excise, Coimbatore

Advocate for Pet/Ap. : For the Appellant: M.N. Bharathi, Advocate. For the Respondent: C. Rangaraju, SDR.

Judgement :

Per Jyoti Balasundaram

1. For reasons recorded below, we waive predeposit of service tax together with interest and penalty and proceed to decide the appeal itself at this stage with the consent of both sides as the issue lies within a narrow compass.

2. The assessees had availed goods transport agency service and the exemption contained in Notification No.32/2004 dt. 2.12.2004 for the purpose of paying service tax on the amount paid for transportation of the goods. The benefit of notification has been denied on the ground that the assessee has not fulfilled the

condition set out in the notification for the reason that (a) the endorsement relating to non-availment of credit on inputs/capital goods by the goods transport agency under Notification No.12/03 was subsequent and (b) there was no declaration regarding non-availment of benefit of CENVAT credit of duty by the goods transport agency.

3. We have perused the copies of the invoices containing the declaration regarding non-availment of benefit of Notification No.12/2003. Assessee submits that if a second chance is extended, he will be in a position to satisfy the authorities below that the goods transport agency had not availed CENVAT credit of duty on inputs or capital goods or CENVAT credit of service tax on input services. In this view of the matter, we set aside the impugned order and remit the case for fresh decision as to fulfilment of the conditions of Notification No.32/2004 by the assessees to the adjudicating authority who shall pass fresh orders after extending a reasonable opportunity to the assessees of being heard in their defence.

4. The appeal is thus allowed by remand.