Batliboi Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-11-1996

Reported in : (1996)(87)ELT90Tri(Mum.)bai

Appellant : Batliboi Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Today, only the stay application was listed for hearing. However, considering the appeal filed, it appears that the demand is hit by period of limitation, the entire appeal is taken up for disposal by granting waiver against pre-deposit.

2. The Modvat credit is sought to be denied on grinding wheels and certain other tools specified in the impugned order and also because, higher notional credit was subsequently taken. The demand is raised for the period April, 1989 to September, 1989 by a show cause notice dated 18-4-1994.

3. Shri Patil, the ld. Advocate, appearing for the appellants, submits that right from the time they filed the declaration, these items were shown as having indirect use. They were neither shown as components nor as raw-materials used in the manufacture and the very mention of use as indirect material was enough to mention that they were tools for which they were availing Modvat credit. He also refers to the entry in RG 23 Part I and II and also refers to the endorsement made by the auditors on their RG I register to the effect that the Modvat credit has been rightly availed of. In his submission, therefore, there is no act of suppression and

the statement made in the Modvat declaration would not tentamount to misdeclaration or misstatement on their part. The demand is therefore hit by the period of limitation.

4. Smt. Bharati Chavan, the ld, DR for the respondents, however, submits that the appellants have never declared the use of the items in the manufacturing process and showing them as having indirect use is an attempt to misguide the department and hence the extended period is justified.

5. Going by the case records, it is clear that the appellants had given a declaration clearly mentioning the intention to avail of the Modvat credit in relation to these items showing as having "indirect use". The mention of having indirect use cannot be held that they had the intention to misguide the department resulting into suppression entitling the department to invoke the extended period. Under these circumstances, there is no cause for invoking the extended period and therefore, the demand is hit by the period of limitation. The order is therefore set aside and the appeal is allowed.