

Telco Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-1997

Reported in : (1998)(100)ELT452Tri(Mum.)bai

Appellant : Telco Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. On hearing Shri J. Krishnaswamy, Divisional Manager (Finance) of the appellant and Shri V.K. Puri, Id. SDR, we find that the issue involved in this case is covered by a Larger Bench decision in the case of Tata Engg. & Locomotive Co. v. C.C. Excise -1996 (87) E.L.T. 157. The dispute arose because of denial of Modvat credit in respect of additional payment of duty made on the inputs by the manufacturer of the goods subsequent to the clearance on gate pass during the period when Rule 57E, Central Excise Rules did not specifically provide for the same. Rule 57E as originally framed provided for variation of credit under the circumstances where variation of credit resulted in refund to the manufacturer; by its subsequent amendment on 15-4-1987 Rule 57E was recast to provide for variation of credit due to variation of duty resulting in refund or recovery of more duty from the manufacturer. The conflicting decisions of the Benches of the Tribunal were on the retrospectivity of this amendment dated 15-4-1987. This conflict has since been resolved by the Larger Bench decision (supra).

The Larger Bench, after considering the two streams decisions, concluded that adjustment, refund or recovery of credit on variation of duty paid is implicit in Rule

57G and the provisions of Rule 57E and the amendment made thereto are only clarificatory and procedural and the Larger Bench held that the amendment has retrospective effect. Such adjustment refund or recovery however can be made only on satisfaction regarding the variation of duty on inputs. Although, it was submitted before us by the Id. SDR that it is understood that a reference application against the conclusion of the Larger Bench has since been allowed, that however will not be a ground for us not to follow it until it is upset or revised by a Higher Forum. Therefore, following the ratio of the Larger Bench decision which is applicable to the facts of the present case, we set aside the impugned order and allow the appeal.

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