

Jct Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-1997

Reported in : (1998)(99)ELT393TriDel

Appellant : Jct Limited

Respondent : Collector of Central Excise

Judgement :

1. These are three appeals filed by the appellants against a common impugned order involving a common issue and, therefore, they are being clubbed together and are being disposed of by this common order.

2. The main issue to be considered in these appeals is whether the appellants entitled to Modvat credit in terms Rule 57C in respect of such inputs which have been used by them in the manufacture of final products, fully exempted from whole of duty of excise on such final products.

3. We find that the issue is no more res Integra in view of the decision of Larger Bench of this Tribunal in the case of Kirloskar Engines Oil v. CCE 4. Arguing for the appellants, Shri Vinod Agarwal, learned Advocate submitted that the Tribunal has taken the view on the issue that the appellants are entitled to take credit in respect of such inputs which have been used by them in the manufacture of final products in the case of M/s. Premier Tyres [1992 (62) E.L.T. 104] and the other Bench subsequent to that has taken a different view as reported in 1992 (67) E.L.T. 412 and accordingly the issue has been referred to Larger Bench in the

case of M/s. Kirloskar Engines Oil referred to above. He submitted that apart from contending the issue on merits, the point to be considered in these cases is whether the department was justified in imposing personal penalties of Rs. 5,000/-, Rs. 5,000/- and Rs. 1,000/- respectively on the appellants. He submitted that the issue is debatable in view of the fact that respective Benches have taken a different view which resulted in referring the matter to the Larger Bench to resolve the issue. He submitted that there was no intention to evade payment of duty and the matter was highly arguable; the appellants under bona fide impression took the credit on the inputs which have been used in the exempted final products and that action cannot be said to be a breach committed with the intention to evade payment of duty to attract penal clause. Mens rea is essential ingredient to take penal action under fiscal law and the Supreme Court specifically has taken the view in the case of Hindustan Steel Limited v. The State of Orissa - 1970 (25) STC 211 and the same was followed by the Supreme Court in the case of Hindustan Sugar Mills v. State of Rajasthan Cement Marketing Co.

of India Ltd. v. Assistant Commissioner of Sales Tax, Indore and Ors. - 1980 (45) STC 197. He drew our attention to the observations made by the Supreme Court in that case. The Apex Court observed that it was a highly arguable contention which required serious view and the belief entertained by the appellants that it was not liable to include the amount of freight in the taxable turnover could not be said to be mala fide or unreasonable, but was a bona fide belief and therefore penalty could not be imposed on the assessee under Section 43 of the Madhya Pradesh Act and Section 9(2) of the Central Act.

5. Arguing for the Revenue, Shri Jangir Singh, learned JDR countering the arguments submitted that mens rea is not pre-requisite for imposing penalty under taxation statute; mere contravention is sufficient to attract penalty as mens rea is not essential ingredient therein.

6. We have carefully considered the submissions made by both sides. On merits the issue has already been decided by the Larger Bench of the Tribunal holding that the appellants are not entitled to Modvat credit in terms of Rule 57C in respect of such inputs which have been used by them in the manufacture of final products

which are fully exempted and hence on merits -the department succeeds.

7. As regards penalty, we find that there is some force in the arguments advanced on behalf of the appellants as can be seen from the fact that the matter is highly arguable and there was no clear cut finding given till the verdict of the Tribunal in the case of Kirloskar Engines Oils referred to above. In the circumstances, it is clear that the appellants were under bona fide impression in availing the benefit of credit on such inputs and the action of the appellants cannot be treated as wilful breach on the part of the assessee without mala fide intention. In the circumstances, following the ratio of decision of the Apex Court referred to above, we accept the contention of the appellants on the issue of imposition of penalty. Accordingly the penalties imposed in these three appeals are set aside. Thus these three appeals are disposed of in the above terms.

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