

Jct Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-1998

Reported in : (1998)(103)ELT687TriDel

Appellant : Jct Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This reference application is filed by the assessee for referring the following questions on the ground that they arise out of the Tribunal's Order Nos. A/827-829/97-NB, dated 24-7-1997 [1998 (99) E.L.T. 393 (Tribunal) :- (a) Whether in the facts and circumstances in the case the Tribunal is correct in holding that Modvat credit is to be disallowed even if only a fraction of the inputs on which the credit is taken, is used in the manufacture of final product which is exempt from payment of duty under Exemption Notification.

(b) Whether for the purpose of taking credit of duty paid on inputs under Rule 57A read with 57C of Central Excise Rules, the relevant stage is when credit of duty paid on inputs is taken, i.e., when the inputs are brought into the factory, since at that stage, it cannot be said that the input will be used for manufacture of final products which are exempt or subject to nil rate of duty, whether credit taken can be denied.

Further, reference application was amended requesting that only following question may be referred to the High Court for its considered opinion :- "Whether

credit of duty taken on inputs can be denied merely because a fraction of the said inputs have been used in the manufacture of final product which is exempt from payment of Excise Duty, particularly when at the time of taking the credit, it cannot be said that the inputs will be used for manufacture of final product which is exempt from payment of duty." 2. Arguing in support of the reference application, Shri V.K. Agarwal, Id. Advocate submitted that on the very issue, the matter has already been referred to the High Court by the Tribunal in the case of Goodyear (India) Ltd. v. CCE and requested that in line with that order, this matter also may be referred.

3. Shri D.K. Nair, Id.DR conceded that the issue has already been referred to the High Court in the case referred to above.

4. We have carefully considered the submissions made by both sides. The issue involved in this case is whether the appellants are 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 from whole of duty of Excise on such final products.

5. The Tribunal as per Order Nos. A/827-829/97-NB held that the issue has already been decided by the Larger Bench of the Tribunal in the case of Kirloskar Engine Oil v. CCE reported in 1994 (73) E.L.T. 835 holding that 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.

6. We find that Tribunal in the case of Goodyear India Ltd. (supra) on the similar facts and circumstances following the earlier reference made by the West Regional Bench to the Bombay High Court, has referred the matter to the High Court. In the facts and circumstances and in view of the fact that the very issue had already been referred to the High Court, following the precedent, we are referring the following question to the High Court of Punjab and Haryana as desired by the party :- "Whether credit of duty taken on inputs can be denied merely because a fraction of the said inputs have been used in the manufacture of final product which is exempt from payment of Excise Duty, particularly when at the time of taking the credit, it cannot be said that the inputs will be used for

manufacture of final product which is exempt from payment of duty."

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