Technicast Engineers Ltd. Vs. Collector of Central Excise

Technicast Engineers Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/13252

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-13-1998

Reported in : (1998)(102)ELT559TriDel

Appellant : Technicast Engineers Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This is a stay application filed w.r.t. the order of Commissioner (A), Ghaziabad, dated 12-8-1997.

2. Ld. Counsel stated that the basic issue involved in this case is as to whether the appellants were entitled to Modvat credit in respect of refractory bricks and refractory goods which were used in the manufacture of continuous cast iron bars for lining the furnace in which waste and scrap of iron is melted before the molten material is cast into bars.

3. Initially, after the issue of the show cause notice the proceedings were dropped by the A.C. but an appeal against the said order filed by the department was accepted by the ld. Commissioner (A); Hence this petition. It was his submission that the question whether the refractory bricks/goods were entitled to Modvat has been settled through several decisions which have been listed in the grounds of appeal including the Calcutta High Court judgment 1993 (66) E.L.T. 594 (Calcutta) and the Larger Bench of the Tribunal 1996 (82) E.L.T. 575 and the appellant's case being totally covered by the decisions-cited the case was strongly in his

favour.

4. Further, the appellant was a sick industrial company under Section 3(1)(4) of the Sick Industrial Companies (Special Provisions) Act, 1985 and it would cast financial hardship to pay the amount mentioned. It was also his submission that no demand as such has so far been raised in pursuance of the order of Commissioner (Appeals). However, this applications has been made because the jurisdictional authorities are pressurising the applicants for immediate payment and even threatening coercive action. Hence, pre deposit of the amount in question may be dispensed with. Further since the issue is already settled the appeal itself may be heard and disposed of.

5. Ld. DR drew attention towards the order of Commissioner (A) and reiterated the department's view as contained therein. In response to queries from the Bench as to how the benefit of Modvat could be denied both under 57A and 57Q once the Tribunal has held such material as eligible for Modvat, ld. DR stated that he leaves the matter to the Bench.

6. In response to further queries, he stated that he has no objection if the appeal itself is also heard and disposed of simultaneously.

7. I have considered the above submissions. I observe that the ld.Counsel is correct in pointing out that it is already a settled issue that such material is entitled to the benefit of Modvat. In view of this position, I allow the stay application and as only a short point is involved, I take up, with the consent of both the sides, the main appeal and hold that in view of the case law cited by the ld. Counsel, the material is entitled to the benefit of Modvat.

8. Of course, earlier in some of the orders of the Tribunal this material was held as entitled to the benefit of Modvat under 57A and in some of the later orders, the refractive bricks have been treated as capital goods entitled to benefit under 57Q; But insofar as the assessee is concerned he is basically concerned with the benefit of Modvat claimed by him (whether it is allowed under 57A or 57Q is immaterial from his point of view). In view of the fact that right up to the Tibunal's stage there has been a shift in the view, the appellants could not be blamed, if

they first declared the goods under 57A and subsequently under 57Q. The basic point remains that the appellants were entitled to the benefit of Modvat and therefore their appeal was required to be accepted. The impugned order is therefore set aside and the appeal is allowed.