

Jct Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-20-1998

Reported in : (1999)(114)ELT618TriDel

Appellant : Jct Limited

Respondent : Commissioner of Central Excise

Judgement :

1. Captioned two appeals, one filed by the Appellant Commissioner and other filed by JCT Limited were heard together and are being disposed of by this common order.

2. In the impugned order it was held that "I have gone through the case records and the judgment of CEGAT cited by the appellants. I find that Rule 57C does not specifically provide that no Modvat credit would be admissible on inputs if the final product is cleared without payment of duty under Notification No. 33/90-C.E. (N.T.), dated 5-9-1990 issued under Rule 191BB of the Central Excise Rules, 1944. Therefore, what is important to examine is the fact that Rule 191BB has been followed by the appellants in letter and spirit in order to avail Modvat credit on inputs. Rule 57C is not at all relevant for the purpose and is not attracted at all in such cases as has also been held by the cited judgments. I find that the facts of the case of Reliance Industries Ltd. v. C.C.E., Bombay [1995 (78) E.L.T. 595 (Tribunal)] are exactly the same as the facts of this case and the points of dispute in both the cases are on all fours. Therefore, the ratio of CEGAT order has to be adopted by the Assistant Commissioner. It does not make any difference if a

reference application is pending in High Court.

Reference application determines certain points of law but the order of CEGAT holds good. It is wrong to plead that the East Regional Bench of CEGAT has got no jurisdiction over Chandigarh Collectorate because the same view has been taken by West Regional Bench of CEGAT also and merits of the case has been analysed and discussed thoroughly in all the cited cases. I, therefore, respect all the judgments of CEGAT in the cited cases and allow the appeal. However, Assistant Commissioner should verify and confirm if the procedure of Rule 191BB has been followed at both consignor's as well as consignee's end before refund is granted to the appellants." 3. M/s. JCT Limited have filed the appeal on the finding of the Commissioner (Appeals) reading as "However, Assistant Commissioner should verify and confirm if the procedure of Rule 191BB has been followed at both consignor's as well as consignee's end before refund is granted to the appellants." 4. The department has come up in appeal on the ground that the Commissioner (Appeals) was wrong that Rule 57C was not applicable to removal of goods under Notification No. 33/90 that direct export and supplies to ultimate exporters are two totally different situations; that while a manufacturer exporting final products is entitled to credit of duty paid on inputs used in their manufacture, this concession is not available to supplier of duty-free inputs to the manufacturer exporter; that the exemption Notification No. 33/90 issued under the then existing Rule 191BB speaks of the movement of intermediate goods without payment of duty by an intermediate advance licence holder and not on the admissibility of Modvat credit.

5. Shri Vinod Agarwal, Id. Advocate appears for M/s. JCT Ltd. whereas Shri P.K. Jain, Id. SDR appears for the Revenue.

6. On the question of the Commissioner's order travelling beyond the show cause notice as agitated by M/s. JCT Ltd., we note that in order to be sure that the credit procedure relied upon for coming to the conclusion is followed sometime directions are given in the orders [adjudication or Order-iii-Appeal]. Thus, we find nothing wrong in the directions given to the Assistant Commissioner to verify the proper procedure is followed by the appellants. In the circumstances we hold that the

Commissioner (Appeals) did not travel beyond his jurisdiction.

In this view of the matter, the appeal filed by M/s. JCT Ltd. is rejected.

7. On the question of department's contention that Rule 57C specifically disallows Modvat credit of duty paid on the inputs used in the manufacture of final products if the final product is exempt from the whole of duty of excise leviable thereon and their contention is that while a manufacturer exporting the final products is entitled to the credit of duty paid on the inputs used in their manufacture, this concession is not available to supplier of duty-free inputs to the manufacturer exporter and that the exemption Notification No. 33/90 speaks of movement of intermediate goods without payment of duty by an intermediate advance licence holder and not on the admissibility of Modvat credit. We note that the identical issue came up before the Tribunal in the case of the appellants themselves in which the Tribunal by its Final Order No. A/59/97-NB, dated 19-2-1997 decided the above said issues in favour of the assesseees holding that the credit taken by the assesseees is admissible to them. In this view of the matter the appeal filed by the Commissioner is rejected.w

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