Cce Vs. Jam Pipes

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Sep-22-1998

Reported in : (1999)(80)LC782Tri(Bang.)alore

Judge : S Peeran

Appellant : Cce

Respondent : Jam Pipes

Judgement :

1. The Revenue is aggrieved of the final order No. 617/98 dated 20.3.1998 passed by this Bench in the appellant's case. By this order, the Tribunal directed the authorities to verify the invoice and grant the benefit of Modvat credit. While doing so the Tribunal noted a large number of judgments in para 4 of the order and followed the ratio therein while passing the final order. The Revenue has raised the following question for reference to the High Court: Whether the respondents are entitled to avail Modvat credit on endorsed invoices, even though these are not documents under Rule 57G(3), and hence contrary to the statutory provisions contained in Rule 57G(3) of Central Excise Rules, 1944? 3. The learned SDR reiterated the various grounds taken by the Commissioner in the application and also the judgment relied upon therein to show that the final order of the Tribunal in the applicant's case is required to be referred to the High Court on the questions raised under Section 35G(3) of the Central Excise Act, 1944.

4. The learned Chartered Accountant appearing for the respondent filed a detailed cross objection. He submitted that the question raised by the Revenue was a matter of consideration in the case of CCE v. Sri Ranganatha Industries in Reference No. 5/98 dated 21.1.1998 and the Tribunal had not accepted the prayer for reference to the High Court on the basis of an earlier order in the case of CCE v. SIV Industries Ltd vide Reference Application No. 131/98 dated 1.7.1998 wherein also similar question formulated was not referred to the High Court. He also submitted that the Tribunal again in the case of CCE v. Kerala State Electricity Development Corporation Ltd. in Ref. No. 124 and 125/97 dated 9.5.1997 also did not refer similar question to the High Court.

He also referred to another order No. 146/98 dt. 12.8.1998 in the case of CCE v. Santhala Ductile & Grey Iron Foundary 1999 (80) ECR 803 (T) wherein also, identical question was not referred to the High Court concerned after taking note of all the citations referred to therein.

He pointed out that once the Tribunal has already taken a view that questions raised are not referable, the repeated stand of the Revenue should not be entertained.

5. On consideration of the submissions made and on perusal of the orders cited by the Chartered Accountant and noted in the order of the Tribunal, the Tribunal refused to refer the similar questions raised in the various reference applications. The Tribunal also noted the judgment of the Gauhati High Court in the case of CIT v. Basantha Kumar Agarwalla and another reported in 1983 (140) ITR 418 wherein it has been laid down that the object of a reference is to get a decision from the High Court on a problematic or debatable questions and not on a dubious and simple point of law, although somehow the determination is somewhere linked up with a provision of law. The High Court observed that the Tribunal need not refer every point of law and the Tribunal is obliged to refer only the question of law which calls for investigation, examination, debate or when it is a dubious problem. In view of the large number of Tribunal orders on similar question referred to above, we hold that there is no merit in this reference application and hence the same is rejected.