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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-1998

Reported in : (1999)(107)ELT245TriDel

Appellant : Escorts Limited

Respondent : Collector of Central Excise

Judgement :

1. The captioned Stay Petition was filed by the Applicants requesting for waiving of pre-deposit of duty.

2. The facts of the case, in brief, are that the Applicants have 2 Units. They were procuring certain inputs for manufacture of Hydraulic Assemblies and other final products. The disputed item before us is Hydraulic Assemblies. The Hydraulic Assemblies were being disposed of in 3 different ways. They were partly being cleared for use in Tractors. Tractors, upto a certain Horse Power were exempt. When these Hydraulic Assemblies were being used for manufacture of this type of Tractors, the Modvat credit taken on the inputs used in the manufacture of Hydraulic Assemblies was being reversed. In the second scenario, some Hydraulic Assemblies were being cleared on payment of duty out of the credit taken on the inputs. The third category was of Hydraulic Assemblies being transferred to their other unit in the same town under Chapter X procedure. The Department alleged that the transfer of Hydraulic Assemblies under Chapter X procedure was without payment of duty, so they should be deemed to be cleared either at NIL rate of duty or be treated as exempt and accordingly, demanded duty equivalent to the credit

taken on the inputs used in these Hydraulic Assemblies. The Dy. Commissioner disallowed Modvat credit of Rs. 9,35,574.16 and Rs. 5,51,126.52 and ordered it to be recovered. On appeal, the ld.Commissioner (Appeals) dismissed the Appeal of the Assessee, but ordered that the Department shall have to re-workout the duty liability by deducting that portion of the duty demand which has already been reversed by the Applicants. Against the impugned order, the Applicants have come up before the Tribunal.

3. We have heard the submissions made by both sides, viz. by Shri Rajinder Sharma, Representative of the Applicant-Company and Shri Sanjeev Srivastava, the ld. JDR.4. In so far as taking credit is concerned, we note that Rule 57A of the Central Excise Rules provides for taking of credit on inputs. At the time of taking of the credit in the instant case, we note that in the 3 situations, only one situation was where credit should have not been taken and that was only in respect of the inputs which went into the manufacture of Tractors of less than 1800 CC because in this case, such tractors were exempted even at the time of receipt of the inputs and, therefore, the prohibition under Rule 57C was applicable. We, however, note that the Applicants at the time of clearance of such Tractors reversed an amount equivalent to the credit taken on the inputs. Credit on the inputs in the other 2 situations was rightly taken because the Hydraulic Assemblies transferred from one Unit to the other were neither exempt nor did they carry NIL rate of duty. The transfers were under Chapter X procedure. In this view of the matter, we hold that in the above 2 situations, credit was correctly taken by the Applicants and is sustainable in law. Since the issue was a simple one, the Appeal itself is disposed of in the above terms.