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Cce Vs. Mahindra and Mahindra Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-07-1999

Reported in : (1999)(85)LC88Tri(Mum.)bai

Judge : G Srinivasan

Appellant : Cce

Respondent : Mahindra and Mahindra Ltd.

Judgement :

1. This is an application by the department, seeking the indulgence of the Tribunal to make a reference to the High Court for the following questions: 1. Rule 57F(i)(ii) permitted the removal of inputs in respect of which the credit of duty has been allowed from the factory for home consumption or for export on payment of appropriate duty of excise as if such inputs have been manufactured in the said factory. The deeming provisions being very clear is it permissible to the CEGAT which is the creation of statute itself to interpret the rule contrary to the above said specific provisions? (ii) In the situation wherein the identical issue was pending decision before the Hon'ble Bombay High Court. Was it right on the part of the CEGAT to decide the case? 2. Brief facts of the case is that the assessees have received 3 show cause notices demanding total duty of Rs. 1,66,605.25. These Show Cause Notices issued on the ground that assessee had received from various small scale units and higher notional credit was availed, while clearing such inputs the credit is re- versed to the extent of credit taken. Such inputs are however, treated to be manufactured by Mahindra and Mahindra and accordingly

instead of reversing the equivalent amount of duty to the extent of credit availed they should have in fact paid the duty applicable to their own products as if the goods were manufactured by them. The said Show Cause Notices were confirmed by the Asstt. Commr. vide his Order-in-Original No. V. 8703(15)19/90 dt.

17.12.1991 on the ground that even if the input Supplier have not discharged the proper duty, once such inputs are received and cleared by M/s. Mahindra and Mahindra they are liable to discharge the correct rate of duty treating the said goods manufactured by them.

3. Aggrieved with the said order M/s. Mahindra & Mahindra filed an appeal with the Commissioner (Appeals). Commissioner (Appeals) rejected the appeal upholding the Asstt. Commissioner's contention stating that applicability of Rule 57F(2) is not contingent upon the nature of the person to whom the goods are consigned and operates, whenever the inputs are removed from the factory.

4. Being aggrieved with the said order of Commissioner (Appeals) assessee went in CEGAT. CEGAT had set aside the order and allowed the appeal on the ground that this matter is covered by the three member bench decision in the case of CCE v. American Service .

5. It is argued before me by the Id. DR under similar circumstances, a reference application is pending in the case of the same assessee. I, therefore, reframe the questions referred in the same way in what was done in the earlier decision. Since the Tribunal in earlier case has referred the matter to the opinion of the High Court I, following the said judgment refer the question to the High Court for its opinion which is reproduced below: Whether under Rule 57F(l)(ii) of the Central Excise Rules, 1944, it is permissible to demand reversal of Modvat credit at the rate of duty prevailing on the date of removal of inputs not manufactured by the Assessee for home consumption, instead of restricting the reversal only to the duty credit actually taken by the Assessee.

6. Reference application is allowed. Registry is requested to refer the above question to the High Court for its opinion.

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