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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-06-1999

Reported in : (2000)(67)ECC119

Judge : S T G.R., P Bajaj

Appellant : C.C.E. Meerut and anr.

Respondent : Super Electronics and Super

Judgement :

1. In all these appeals the issue is the same i.e. whether at the time of reversion from availing Modvat credit to small scale industries exemption the Modvat credit lying at the credit of an assessee is required to be reversed or not.

2. Out of the 6 appeals one appeal has been filed by M/s. Super Electronics, remaining 5 appeals have been filed by the Revenue. We have heard Sh. S. Srivastava for the revenue and none is present for the assessee. They have however requested to decide their case on merits.

3. We find that similar issue came up before the Tribunal. The Larger Bench of this Tribunal inter alia held that Modvat credit lying in the account to the credit of the assessee at the time of reversion from availment of Modvat credit to availment of exemption as an SSI unit.

The credit shall have to be reversed. We note further that similar view was taken by the Hon'ble High Court in the case of Super Cassettes . In para 10 the Hon'ble

Allahabad High As is evident, entries in PLA account and other documents are at times provisional in nature and become final after certain events take place. For example a personal ledger account is commenced with a credit entry represented by a cash deposit in the treasury as required under Rule 9. When the first deposit is made in the treasury there is no payment of any excise duty. The deposit and the corresponding credit in the PLA account is only a provision for making payments of excise duty on the goods that are manufactured and are to be removed. Therefore, when a person makes the cash deposit in the treasury he does not actually pay excise duty he only makes a provision for the payment thereof and the actual excise duty stands paid only when it becomes payable in accordance with the Act and Rules. Rule 57A clearly shows that Modvat credit is available for utilising the credit so allowed towards payment of excise duty leviable on the final products. Therefore, there can be no finalised credit unless the inputs are used in accordance with Rules 57A and 57F and either excise duty on the final product is paid or inputs are otherwise disposed of for home consumption or export etc. Till such events occur the Modvat credit is only provisional and cannot be said to be final and irrevocable. It is only for certain accounting purpose that the amount is credited to the PLA account and can be used as a credit balance for actual payment of duty on manufactured goods at the time of their removal. The final settlement would, however, happen only when such inputs have actually been used for the purpose of specified and/or excise duty has been paid on the final product. It is true that Rule 57G does not specifically contemplate a reversal of the credit but this is implied from purpose of the Scheme and nature of the Rules.

4. The issue was partly gone into by the Hon'ble Supreme Court also in the case of M/s. Chancier Pur Magnetics .

5. Following the ratio of the above judgments we hold that the Modvat credit lying in the accounts of an assessee on the date of reversion from availment of Modvat credit to availment of exemption as SSI Unit shall have to be reversed. The 6 appeals are disposed of in the above terms. The Department's appeal is allowed and the party's appeal is rejected.