Sagar Twisters Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-09-1999

Reported in : (2000)(89)LC509Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Sagar Twisters

Respondent : Cce

Judgement :

1. Application is for waiver of deposit of duty of Rs. 19.90 lakhs and penalty of equal amount under Section 11AC of the Act. The duty has been demanded and penalty imposed, because the applicant took credit under Rule 57Q of Rs. 21,000/- approximately on 09/08/1997, while it had declared its intention to avail of the benefit of notification 4/97 as amended. One of the conditions for the availing of this notification is that no credit under Rule 57A or Rule 57Q "has been availed".

2. The contention of the advocate for the applicant is that while the credit was taken it was not utilised towards payment of duty and the credit taken was reversed in September, 1998, and that, therefore credit has not been availed of. He cited the judgement of Madras High Court in Mani P.S. v. A. Palani Muthupillai and Anr. AIR 1996 Madras 60 to say that one avails of something if one benefits from it.

3. The departmental representative says that acceptance of this argument would lead to a situation that the assessee after utilisation of credit avails of the notification benefit.

4. This argument, prima facie, does not appeal to us. It is not clear to us, how, after utilising any of the credit taken towards payment of duty, it can be reversed. The object behind the condition evidently, is to ensure that assessee does not get the benefit of duty exemption as well as the benefit of modvat credit of the duty paid on the inputs. On this consideration, we are satisfied, prima facie, that the act of taking of modvat credit of duty which was not utilised towards payment, does not contravene the provisions of the notification.

5. Accordingly we waive deposit of duty and penalty imposed and stay its recovery.