Collector of Central Excise Vs. Technical Associates

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-16-2000

Reported in : (2000)(119)ELT133TriDel

Appellant : Collector of Central Excise

Respondent : Technical Associates

Judgement :

1. This reference application is filed by the Revenue on the ground that following questions are required to be referred to the High Court for its considered opinion: - "(a) Whether the availment of Higher Notional Credit under Rule 578 of Central Excise Rules, 1944 on a date subsequent to the date on which the original credit was taken on receipt of the input, is legally correct The said issue is under examination before the Bombay High Court in view of Reference Application filed by the Regional Bench of CEGAT, at Bombay.

The rejection of the departmental appeal in the CEGAT does not appear to be legal and proper on the grounds that adjustment of duty under Rule 57E of Central Excise Rules, 1944 is different from admissibility of Higher Notional Credit under Rule 57B. The Hon'ble Tribunal has infact, in the case of C.C.E. v. Associated Flexible & Wires (Put.) Ltd., 1994 (74) E.L.T. 902 (Bombay CEGAT) accepted the reference application filed by the department, and took a decision to refer the following question of law to the High Court.

"Whether the interpretation of Rule STB done by the Hon'ble Appellate Tribunal is to be held as proper and just i.e. higher notional credit can be taken within a reasonable period i.e. within six months from the date of receipt of inputs and original date of credit taken".

(b) That the Board vide Circular 267/34/88-CE. 8, dated 18-7-1990 had clarified that the Higher Notional Credit cannot be allowed at a later date (based on opinion of the Ministry of Law) that in the absence of any specific provisions under the Modvat Rules, the Higher Notional Credit under Rule 57B cannot be taken at a later date of the receipt of the input in the factory of the Modvat user".

2. Heard Shri Sumit K. Das, learned JDR for the Revenue. None appeared on behalf of the respondent.

3. The order was passed by the Tribunal as per Order No. A/215/96-NB, dated 19-1-1996. It was submitted by Sh. Das, Ld. JDR that the said order has been received by the department on 27-3-1996 and accordingly within 60 days from the date of the receipt of the order the reference application was filed in the Registry of the Tribunal. Apart from that, I noticed that this reference application was filed by the Asstt.

Commissioner. It is settled position now that reference application should be filed by the Commissioner. He has no power to authorise the Asstt. Commissioner to file reference application. This is the consistent view of the Tribunal. In the facts and circumstances and as per the provisions of law this reference application is not maintainable. Accordingly, reference application is hereby rejected.