Commissioner of C. Ex. Vs. Agarwal Steel Re-rolling Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-02-2000

Reported in : (2001)(130)ELT869TriDel

Appellant : Commissioner of C. Ex.

Respondent : Agarwal Steel Re-rolling Mills

Judgement :

1. Revenue has filed this Reference Application stating that the following point of law arises out of Tribunal Final Order No.E/853/97-NB, dated 28-7-1997 :- "whether the facility of deemed Modvat credit under Ministry of Finance Order No. MF (DR)/Order/TS/36/94-TRU/ dated 1-3-1994 would be available to the re-rollers even after crossing the monetary limit of Rs. 75 lakhs in respect of value of clearances, in terms of Notification No. 1/93, dated 28-2-1993".

2. Shri S.K. Das, ld. JDR, arguing the case for the applicants submits that the Tribunal by the Final Order held that the deemed Modvat credit will be admissible even after crossing the limit of Rs. 75 lakhs during the financial year. This decision of the Tribunal was based on its earlier decision in the case of Sandeep Steel and Agro Industries and Ors. contained in Final Order Nos. A/261-262/97-NB, dated 4-2-1997. He submits that in the meantime because there were different views by different Benches, the matter was referred to the Larger Bench in the case of M/ s. Digambar Foundry and Ors. v. CCE, Allahabad and Ors. He submits that Larger Bench of this Tribunal in this case reported in 2000 (38) RLT 435 (CEGAT-L.B.), held that re-rollers who had clearances in a financial year in excess of Rs. 75

lakhs are not eligible for the benefit of deemed Modvat credit in view of the Ministry of Finance Order No. MF (DR)/Order/TS/36/94-TRU, dated 1-3-1994 read with Notification No. 1/93-C.E., dated 28-2-1993. He submits that since the Larger Bench had taken a view different from the one in the present case, therefore, a point of law arises. He therefore, prays that a reference may be made to the Hon'ble High Court of Allahabad.

3. Shri Gopal Prasad, ld. Counsel, appearing for the Respondents has no objection.

4. We have heard the ld. DR. We have also perused the evidence on record. We note that Larger Bench of this Tribunal has taken a view different from the one taken in the case before us. This shows that there is a difference in opinion and therefore a point of law arises from the applicants point of view. Going by the two decisions, i.e. the decision in the present case and the decision of the Larger Bench in the case cited above, we agree that a point of law arises. Therefore, the Reference Application of the applicant is allowed. The case should be referred to the Hon'ble M.P. High Court at Jabalpur for their considered opinion.