

M/S. Kothari Fermentation and Vs. C.C.E., Ghaziabad

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-02-2001

Appellant : M/S. Kothari Fermentation and

Respondent : C.C.E., Ghaziabad

Judgement :

1. The appellants filed these appeals against the order-in-appeal dated 27.12.2000 passed by the Commissioner (Appeals) whereby the benefit of MODVAT credit was denied on parts of machinery on the ground that no declaration in respect of parts of machinery was filed by the appellants.

3. The contention of the appellants is that Rule 57 T of Central Excise Rules is amended by Notification 7/99 dated 9.2.99 to effect that credit shall not be denied on the ground that the declaration filed does not contain all the details required to be contained therein. the Board issued a circular No. 441/7/99 dated 23.2.99 to follow certain guidelines in respect of notification no. 7/99 and the Board clarified that the guidelines are applicable to the pending cases also.

4. The Larger Bench of the Tribunal in the case Ka MAKHYA Steels (P) Ltd. vs C.C.E. reported in 2000 (40) RLT 575, after considering the amendment To Rule 57 T of Central Excise Rules, held as under : "Shri A.R. Madhav Rao, Id. Advocate as an intervener submitted that the question referred to the larger bench in the instant case need not be answered and matter be remanded to the Adjudicating Authority to examine the issue afresh in the light of amendments to Rules 57G and 57T as per Notification No. 7/99-CE(NT) dated 9.2.99, and the two Circular (M.F.

DR. Letter F.No. 267/6/92-CX dated 30.1.92 and Circular No. 441/7/99-CX dt. 23.2.99) [reported in 1999 (31) RLT M61]. He referred to the relevant amendment (7/99-CE(NT) dt. 9.2.99) which is as under:- "7//99-CE(NT), dt. 9.2.1999: In exercise of the power conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely:- 1. (1) These rules may be called the Central Excise (3rd Amendment) rules, 1944.

(2) They shall come into force on the date of their publication in the Official Gazette.

(a) in rule 57G, after sub-rule (10), the following sub-rule shall be inserted, namely,- "(II) Credit under sub-rule (2) shall not be denied on the grounds that- (i) any of the documents, mentioned in sub-rule (3) does not contain all the particulars required to be contained therein under these rules, if such document contain details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse; (ii) the declaration filed under sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under sub-rule (1)." He submitted that circular are binding on the authorities functioning under the statute. Referring to the Circular No. 441/7/99 dated 23.2.99, he said that Circular was issued to follow certain guidelines in respect of Notification No. 7/99 dated 9.2.99 while considering the admissibility of modvat credit and further it was specified in the circular that guidelines are applicable to the pending cases and the pending cases are to be disposed of accordingly. In this context, he referred to the decision of the Supreme Court in the cases of Mathew M. Thomas Vs Commissioner of Income Tax reported in 1999 (33) RLT 227 (SC)=1999 (111) ELT 4 (SC) wherein it was held that proceedings shall include proceedings at the appellate stage. Particularly, he drew our attention to the para 8 of the said judgement which reads as under:- "8. It is well settled that the word "Proceedings" shall include the proceedings at the appellate stage. It is sufficient to refer to the judgement of this Court in Garikapati Veeraya V.N. Subiah Choudhary & Ors. -AIR 1957 S.C. 540 wherein the Court said at page 553:- (i) That the legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all

connected by an intrinsic unity and are to be regarded as one legal proceedings".

Hence we are unable to persuade ourselves to agree with the view expressed by the Full Bench of the High Court in the Judgement under appeal that the Circular would apply only to proceedings pending before the Competent Authority".

We are not convinced with the arguments advanced on behalf of the Revenue that amended provisions and Circular referred to above are not applicable to the point in issue. On going through the amendment to Rule 57G particularly with reference to sub-clause II of 2(a) of 7/99-CE(NT) dated 9.2.99 the Circular and the case law, we find that matter is required to be re-examined as it was rightly pointed out by the intervener. In the view we have taken, the matter is remanded to the Jurisdictional Assistant Commissioner to examine the admissibility of modvat credit for the period covered under Appeal No. E/1840/95 and to pass an order in accordance with law".

5. In view of the above mentioned decision of the Larger Bench of the Tribunal, the impugned order is set aside and the matter is remanded to the adjudicating authority for deciding afresh. (Dictated in Court).

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