

Commissioner of Central Excise Vs. Rajaganapathy Steels

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-05-2001

Reported in : (2001)(75)ECC404

Appellant : Commissioner of Central Excise

Respondent : Rajaganapathy Steels

Judgement :

1.The Hon'ble High Court of Judicature at Madras by order dated 3-4-2000 in RCP No. 14/96 has directed this Tribunal to draw up a statement of case together with all the relevant documents relating to the following question and submit them for answering the same in terms of Section 35G of the C.E. Act, 1944. The question sought to be referred to as per the High Court's order is noted herein below : "Whether the CEGAT is correct in extending deemed credit facility extended under Government of India's order No. TS/36/94/TRU, dated 1-3-1994 to an unit availing of the exemption in terms of Notification No. 1/93-C.E., dated 28-2-1993, even after the unit crosses the value of clearance of Rs. 75 lakhs and when the unit pays full rate of duty?" 2. The facts of the case are that the appellants are manufacturers of rerollable products falling under chapter 72 of the Central Excise Tariff Act, 1985. They availed deemed credit for the inputs received for the manufacture of the final product as per the Ministry of Finance, Department of Revenue letter Order No. TS/36/TRU, dated 1-3-1985. As per the Board's letter No. TS/36/TRU, dated 1-3-1994 the assessee claimed the eligibility of deemed credit for Rs. 92,045 on the ingots and rerollable materials of iron and steel purchased from outside subject to the condition that they are eligible for availing exemption under Notification 1/93, dated 28-2-1993. The department took the view that as the appellants assessee had availed exemption under the above noted Notification and had crossed the value of clearance of Rs. 75 lakhs on 17-2-1995 and had started paying normal rate of duty, therefore, they are not entitled to avail the deemed credit as provided for in the cited order after crossing the exemption limit of Rs. 75 lakhs and as a consequence rejected their deemed credit for Rs. 27,678/- on the raw materials purchased during 4-7-1992 to 31-3-1992 and utilized Rs. 72,803.00 during the period 17-3-1996 towards payment of duty on the final product cleared by them. Show cause notice No. OC 1036/95, dated 2-6-1995 was issued by the Supdt. of Central Excise demanding duty of Rs. 27,678 and calling upon them as to why the wrongly availed deemed credit of Rs. 72,863 should not be recovered.

The assessee filed their detailed reply and thereafter the matter was adjudicated in order in original No. 368/95, dated 31-8-1995 rejecting the appellants' plea and the show cause notice was confirmed.

Appellants filed appeal before the Collector (Appeals) who by order in appeal No. 716/96, dated 17-6-1996 allowed the assessee's contention and set aside the order of the AC with consequential relief. Aggrieved by the said order, the Revenue filed appeal before the Tribunal. The Tribunal by Order No. 1007/97, dated 27-3-1997 rejected the Revenue appeal by following the ratio laid down by its earlier order in the case of CCE v. Venkateswam Steel Industries as reported in 1996 (86) E.L.T. 446. The relevant para 4 of the order noted in the final order is extracted below: 4. We have considered the pleas made by both the sides. We observe that the benefit of Modvat credit has been made available specifically to the categories of assessees who are availing of the benefit of Notification 1/93. To be eligible to the benefit of Notification 1/93 certain criteria as set out in

the notification has to be satisfied. This criteria relate to aggregate value of clearances made in the past year and also whether the goods being manufactured are branded goods of another person or not and the exemption is granted based on certain slab rate, the value of clearances of specified goods by one or more manufacturers from a factory or by one manufacturer from one or more factories. Under Notification 1/93 this slab rate has been provided till clearance reached 75 lakhs and thereafter, at the normal rate of duty like by anybody not functioning under Notification 1 /93 is required to be paid. Under Government of India order granting facility of deemed Modvat credit therefore, categories of manufacturers identified are those who are eligible to the benefit of the said Notification. The exception have been carved out taking into consideration the difficulties of this category of manufacturers and they have been exempted from the requirement of production of gate pass etc.

evidencing payment of duty in respect of the inputs in question taking into consideration the ground realities in regard to purchase [of] material by them from open market. After granting the facility to such of those manufacturers, the question is when they exceed Rs. 75 lakhs whether they will continue to be eligible to the benefit.

We observe that the facility has been accorded to a category of manufacturers whose operation going by the parameters of clearance in the past year and in the year in question in which the inputs are received and taking into consideration their mode of purchase etc.

The character of their operations by virtue of 75 lakhs limit therefore does not change and they continue to be the same category of manufacturers as they were when they cleared goods at slab rate upto Rs. 75 lakhs. The wording used in the notification viz. the facility available is to those who are availing the benefit of Notification 1/93 can be taken to be as identifying the category of manufacturers who satisfy the criteria as set out in Notification 1/93 and who actually avail of the benefit of this Notification during the year in question and continue to operate under this Notification throughout the year. In this view of the matter, we hold that the lower appellate authority's order is maintainable in law and we therefore, dismiss the appeal filed by the Revenue.

3. Aggrieved by the rejection of the Revenue appeal the Revenue has filed reference application before the Tribunal and the Tribunal by reference Order No. 64/98, dated 16-3-1998 took the view that Tribunal's view expressed in Venkateswara Steel Industries as noted above is correct view and it does not call for reference to the High Court. Being aggrieved of the said rejection of the Reference application of the Revenue, the High Court of Judicature at Madras vide RCP No. 14 of 1998, dated 3-4-2000 has directed the Tribunal to refer the above noted question with the statement of case and the relevant documents for answering the question.

4. After hearing the learned SDR Shri G. Sreekumar Menon and Shri V.S.Venugopal, learned Counsel for the assessee the statement of case as noted is drawn up. The Registry is directed to send the reference along with the paper book and the relevant document to the Registrar of the High Court of Madras for placing it before the relevant Bench of the High Court for answering the question.

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