

Commissioner of C. Ex. Vs. Ashok Iron and Steel Fabricators

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-07-2002

Reported in : (2003)(87)ECC668

Judge : K Usha, N T C.N.B., P Chacko, B T K.K., K Kumar

Appellant : Commissioner of C. Ex.

Respondent : Ashok Iron and Steel Fabricators

Judgement :

1. This appeal is placed before the Larger Bench by a reference under Order No. C-I/2077-79/WZB/2001, dated 1.8.2001 by the West Regional Bench of the Tribunal.
2. The reference was necessitated in view of conflicting decisions of two High Courts, namely Super Cassettes Industries v. Union of India 1997 (94) ELT 302 of Allahabad High Court and Collector of Central Excise & Customs, Cochin v. Premier Tyres Ltd. 2001 (130) ELT 417 of Kerala High Court. Since the decision of the Kerala High Court was rendered following a decision of the Supreme Court in Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd. 1999 (65) ECC 354 (SC) : 1999 (112) ELT 353 (SC), it was felt that the matter need not go before 7 Member Bench in spite of the decision of the Larger Bench of the Tribunal in Khanbhai Esoofbhai v. Collector of Central Excise, Calcutta 1999 (107) ELT 557 (Tri.-LB).

3. The issue that arises for consideration is whether credit availed and utilised under the Modvat Scheme during the period when the final products were dutiable is required to be reversed when subsequently the final product is exempted from duty. Facts in the present case are not in dispute. The respondent is manufacturing both Kerosene Wick Stove as well as parts of Kerosene Wick Stove. When Kerosene Wick Stoves were wholly exempted from duty under Notification dated 1.3.94 the parts which were also end products of the respondent were not granted the exemption. Subsequently, parts captively consumed were exempted under Notification No. 10/96-C.E., dated 23.7.96. The respondent had obtained Central Excise licence since parts of the stove were not exempted prior to 23.7.96. The respondent worked out the stock of inputs lying with them aggregating to Rs. 12,17,473 as on 22/23.7.96 and accordingly reversed an amount of Rs. 2,01,261 vide RG 23A, Part II, Entry No. 421, dated 9.8.96 and an amount of Rs. 10,16,212 vide Personal Ledger Account Entry No. 373, dated 9.8.96. Later on, realising that they were not required to pay/reverse the credit of the inputs, already utilised by them before 23.7.96 they filed a claim for refund of Rs. 10,16,212 before the competent authority. This claim was rejected by the adjudicating authority holding that availing of credit in anticipation of the use of the inputs in the manufacture of dutiable products become irregular once the finished products become exempt from duty. The finished products losing their dutiable character would have its effect on the credit of duty taken and utilised already. If such credit had been taken and also utilised already, then such utilisation was irregular and had to be recovered.

4. On appeal by the assessee, Commissioner (Appeals) took a different view. According to him, the assessee is entitled to claim refund in respect of the credit which they had already utilised while clearing their final product at a time when it was dutiable. He took the view that there is no provision in law to recover the credit of duty on inputs which has been availed and utilised at the material time in the clearance of final product. He placed reliance on the decision of the Supreme Court in *Eicher Motors Ltd. v. Union of India* 1999 (63) ECC 582 (SC) : 1999 (106) ELT 3 and certain other decisions. We find no reference in this order to the decision of the Allahabad High Court in *Super Cassettes Industries Ltd.*, or to the decision of the Larger Bench of this Tribunal in *Khanbhai Esoofbhai*. It is true that

the decision of the Kerala High Court in Premier Tyres Ltd., case was after the appellate order but the decision of the Supreme Court in Dai Ichi Karkaria Ltd. which was rendered as early as on 11.8.99 is not seen placed before the appellate authority.

5. In Super Cassettes Industries Ltd., a decision rendered by a Single Judge of the Allahabad High Court it was held that Rule 57A shows Modvat credit is available for utilising the credit so allowed for payment of excise duty leviable on the final products and therefore, there can be no finalised credit unless the inputs are used in accordance with Rules 57A and 57F and either excise duty on the final product is paid or the inputs are otherwise disposed of for home consumption-or export etc. Till such events occur, the Modvat credit is only provisional and cannot be said to be final and irrevocable. It was further held that the inputs which have been used in the manufacture of final products, which have become exempt from excise duty, Modvat credit in respect of such inputs becomes inadmissible and will have to be reversed. In Premier Tyres Ltd., the Kerala High Court took the view that if at the time of taking the Modvat credit final products are not exempted it is not necessary to reverse the entry in the light of a subsequent exemption Notification relating to the end product. In taking the above view reliance was placed on the Supreme Court decision in Dai Ichi Karkaria Ltd. 6. Before the Supreme Court, the Attorney General, drawing support from the decision in Super Cassettes Industries Ltd., contended that there could be no final credit until the inputs were used and excise duty on the final product was paid or the inputs were otherwise disposed of.

The submission was that the credit was a contingent credit. It might be disallowed under certain circumstances. The manufacturer did not have any indefeasible right or title to it. The credit of excise duty on the raw material in the register maintained for Modvat purposes was only a book entry which might be utilised later for payment of excise duty on the excisable product. In other words, it matured when the excisable product was removed from the factory and the stage of payment of excise duty thereon was reached. This, argument did not find favour with the Apex Court. The nature of the credit for excise duty paid on raw material was explained in the following manner: "It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by

him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available." 7. The learned Departmental Representative very strenuously argued interpreting different provisions relating to the Modvat Scheme that availing of Modvat credit was not irrevocable and when subsequently the end product was exempted from duty the entry has to be reversed even if the credit has been utilised by the time. He placed reliance on the following decisions of the Supreme Court in-CCE, Meerut v. Modi Rubber Ltd., (2) CCE, Jaipur v. Raghuvar (India) Ltd., 2000 (70) ECC 1 (SC) : 2000 (38) RLT 777 (SC) (3) Chandrapur Magnet Wires (P) Ltd., 1996 (53) ECC 139 (SC) : 1996 (81) ELT 3 (SC) CCE, Vadodara v. Dhiren Chemical Industries 2002 (79) ECC 1 (SC) : 2002 (139) ELT 3 (SC) and took us through those decisions. We find that none of these decisions relate to the issue with which we are concerned. We are not informed that a later decision of the Supreme Court has taken a different view from Dai Ichi Karkaria Ltd. 1999 (65) ECC 354 (SC) , In view of the above, we are bound by the dictum laid down by the Supreme Court in Dai Ichi Karkaria Ltd, Since the issue is now covered directly by a decision of the Apex Court, we find it not necessary to place the matter before a Bench of 7 Members even though a Bench of 5 Members has taken a contra view in Khanbhai Esoofbhai.