Alfa Transformers Ltd. Vs. Commissioner of C. Ex. and Cus.,

Alfa Transformers Ltd. Vs. Commissioner of C. Ex. and Cus.,

SooperKanoon Citation : sooperkanoon.com/27327

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jan-23-2002

Reported in : (2002)(142)ELT251Tri(Kol.)kata

Judge : A Wadhwa

Appellant : Alfa Transformers Ltd.

Respondent : Commissioner of C. Ex. and Cus.,

Judgement :

1. The prayer in the application is for dispensing with the condition of pre-deposit of duty amount of Rs. 1,04,711.00 and penalty amount of Rs. 2,000/-.

2. As per facts on record, the appellants availed the Modvat credit of countervailing duty based upon the invoices issued by a 100% EOU. The said 100% EOU, in the four invoices, separately quantified the amount of Customs Duty, Special Excise Duty and Additional Excise Duty (C.V.D.). As per such invoices, the quantum of CVD paid by them was to the extent of Rs. 1,36,177/- whereas the appellants availed the credit of CVD to the extent of Rs. 2,40,888/-.

3. The appellants were issued a show cause notice proposing to deny the excess Modvat credit so availed by them. In their reply to the show cause notice, the appellants contended that the invoices have been issued by 100% EOU and instead of taking credit of actual CVD paid by them, they have availed the credit at the rate of 13% adv., inasmuch as Notification No. 5/94-C.E. (N.T.) provides for

taking credit of duty which is equal the Additional duty leviable on the goods under Section 3 of Customs Tariff Act, 1975.

4. The Assistant Commissioner did not find favour with the above submissions of the appellants and confirmed the amount of duty and penalty.

5. On appeal against the above order, the Commissioner (Appeals) observed that the provisions of the various Notifications provide for availing the credit of duty actually paid by 100% EOU and there is nothing in the rules to suggest that wherever 100% EOU has paid 50% of duty leviable, the credit can be taken on 100% of duty leviable.

Accordingly, she upheld the impugned order of the lower authorities.

6. Shri C.R. Das, Id. Advocate appearing for the appellants submits that an identical issue cropped up before the Larger Bench of the Tribunal in the case of Vikram Ispat v. Commr. of Central Excise, Mumbai-III reported in 2000 (120) E.L.T. 800 (Tribunal-LB) and the disputed issue stands resolved in favour of the appellants.

Accordingly, he prays for allowing the stay petition unconditionally.

8. I have carefully gone through the Larger Bench decision in the case of Vikram Ispat. It is seen in that case that 100% EOU were clearing the goods on payment of duties which were not seggregated into different types of duties. It was in these circumstances that the Tribunal in Para 17 of the said judgment observed that the question which arises is how to determine the quantum of Modvat credit available to the manufacturer in respect of the goods procured from a 100% EOU.The Larger Bench have also accepted the formula suggested by the Id.

Advocate that first additional duty of Customs leviable on like goods, if imported into India from outside has to be calculated and then the actual amount of duty paid by the 100% EOU on the goods cleared to any part in India under Notification 2/95 has to be ascertained. If the additional duty is less than the actual duty paid credit would be admissible equivalent to the additional Customs duty. If the actual duty by 100% EOU is less than the additional duty of Customs payable on likes goods credit would be available only to the extent of actual duty paid by 100% EOU. Inasmuch as, in the instant case, the actual countervailing duty paid by 100% EOU is available, I am of the view that the authorities below have rightly restricted the credit to that extent. As such, the appellants do not have a prima facie, case so as to allow the stay petition unconditionally. The appellants have also pleaded the financial hardship. Accordingly, taking into account the entire facts and circumstances of the case, I direct the appellants/applicants to deposit an amount of Rs. 50,000/- within a period of four weeks from the date of receipt of the said order and report compliance to the Tribunal on 11th March, 2002. Subject to deposit of the above amount, the condition of pre-deposit of balance amount of duty and penalty is waived and its recovery stayed during the pendency of the appeal.

9. In case of compliance with the above order by the applicants, the appeal itself would be taken up on the same date.