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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-30-2002

Reported in : (2003)(106)LC173Tri(Delhi)

Judge : K Kumar

Appellant : Kukanda Mal Ram Ditta Mal

Respondent : Cce

Judgement :

1. This is an appeal against the order dated 7.12.2001 passed by the Commissioner of Central Excise (Appeals), New Delhi. The issue relates to availment of deemed modvat credit.

2. Shri J.P. Kaushik, learned Advocate has appeared on behalf of the appellants and he submitted that the period of dispute is 17.11.1994.

The appellants are manufacturers of iron and steel products falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellants have been availing of the Small Scale exemption under Notification No.1/93-CE dated 28.2.1993 and also the deemed modvat credit on the inputs in terms of Government of India order No. TS/36/94-TRU dated 1.3.1994.

During the financial year 1994-1995, the appellants reached the value limit of Rs. 75 lakhs for clearances in terms of Notification No.1/93-CE on 17.11.1994 and started paying full duty under protest. The appellants also stopped taking deemed credit on 17.11.1994 in terms of the Government order dated 1.3.1994. On 17.11.1994, the appellants had a closing balance of deemed credit amounting to Rs. 5,15,138.50 P. in their RG 23-A Part II account. This deemed credit balance was utilized by the appellants for payment of duty on the final products cleared during the period 17.11.1994 to 31.3.1995. He contended that as per the Government order dated 1.3.1994, the deemed credit is available to the appellants as per letter dated 1.3.1994 at page 8 and the appellants have followed the procedure for taking the deemed modvat credit as per Rule 57-G and has utilized the same as per the provisions of Rule 57-F.In support of his contention, the learned Advocate has relied on the following decisions: 2000 (38) RLT 435 (CEGAT-LB) Digamber Foundry and Ors. v. CCE Allahabad.(SC) CCE Pune v. Dai Ichi Karkaria Ltd. and Ors.(T) Garg Industries v.CCE New Delhi(CEGAT) CCE, Chandigarh v. Ludhiana Bottling Co. and Ors.

1996 (13) RLT 143 (CEGAT) CCE, Col. Iv. Black Diamond Beverages Pvt.

Ltd. He finally submitted that the appeal may be allowed and the impugned order may be set aside.

3. Shri B.C. Pushkarne, learned DR has appeared on behalf of the Revenue and he reiterated the findings of the learned Commissioner (Appeals).

4. I have heard the rival submissions and perused the records carefully and the case laws relied upon by the learned Counsel for the appellants. I find from the records that the appellants had not taken any deemed modvat credit after reaching the exemption limit of Rs. 75 lakhs on 17.11.1994 during the financial year 1994-1995 and that they had only utilized the deemed credit taken prior to 17.11.1994 for payment of duty for final products cleared between 17.11.1994 and 31.3.1995. The order dated 1.3.1994 does not bar utilization of the deemed credit validly taken. The learned Commissioner has only relied on the decision of the Larger Bench in the case of Digambar Foundry and Ors. reported in 2000. (38) RLT 435 Larger Bench. This Judgment deals with the taking of deemed credit after crossing the exemption limit of Rs. 75 lakhs and not utilisation of the deemed credit after crossing the limit of Rs. 75 lakhs validly taken before crossing the said limit.

The said Judgment does not require reversal of the deemed modvat credit lying in the balance on the date the assessee crosses the exemption limit of Rs. 75 lakhs. The facts of the present case are different from that of Digambar Foundary relied upon by the Id. Commissioner. I therefore, set aside the impugned order and the appeal is allowed.

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