

Rine Machine Tools Vs. Cce

Rine Machine Tools Vs. Cce

SooperKanoon Citation : sooperkanoon.com/29038

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-04-2002

Reported in : (2003)(86)ECC83

Judge : P Chacko

Appellant : Rine Machine Tools

Respondent : Cce

Judgement :

The appellants were, during the material period, engaged in the manufacture of Tractor parts and were availing the benefit of Modvat credit on inputs. In respect of the inputs which they procured from manufacturers working under the Compounded Levy Scheme under Rule 96-ZP of the Central Excise Rules, 144 read with Section 3-A of the Central Excise Act, 1944, the appellants were entitled to the benefit of deemed Modvat credit at the rate of 12% of invoice price of such inputs in terms of Notification No. 58/97-CE(NT) dated 30.8.97. During April to September, 1998, they took such credit on the inputs supplied under cover of invoices issued by the following Input manufacturers: 2. The Original Authority disallowed the deemed credit taken on the inputs supplied by the above parties during April to September 1998 on the ground that the appellants, did not fulfil the conditions of Notification No. 58/97-CE i.e. the input manufacturers had not fully discharged the duty liability in respect of the goods for the respective periods. The lower Appellate Authority affirmed the decision of the Original Authority but reduced the penalty imposed by the Original authority to Rs. 20,000. The finding of

the lower Appellate Authority, as recorded in its order, is that the appellants had not produced certificates from the Central Excise Range officers having jurisdiction over the input manufacturers to prove that the latter had discharged duty liability in respect of the inputs. The present appeal is against the decision of the Commissioner (Appeals).

3. Examined the records. It appears from the records that, during the pendency of this appeal, the learned JDR obtained reports from the Commissioner concerned regarding payment of duty by the Input manufacturers for the relevant periods. A copy of the report has been brought on record today. This report shows that the following Input manufacturers had fully discharged their duty liability for the material period: In respect of the remaining four Input manufacturers, the report is to the effect that duty liability has not been fully discharged by them for the relevant period.

4. Heard both the sides. The learned Counsel for the appellants submits this, in respect of the inputs supplied by the five parties, who discharged duty liability for the material period, the deemed Modvat credit may be allowed. In respect of the inputs supplied by the remaining four parties, the learned counsel is agreeable to the dispute being kept in abeyance with the Adjudicating Authority so as to be adjudged as and when the input manufacturers discharge the duty liability for the relevant period.

6. Having examined the reports submitted by the learned JDR as well as the submissions made by both the sides, I am of the view that the deemed Modvat credit taken by the appellants on the inputs supplied by the five parties named above, who have admittedly discharged the duty liability for the material period, should be allowed to the appellants and the same is accordingly, allowed. In respect of the deemed credit taken on the inputs supplied by the remaining four parties named above, who have not fully discharged the duty liability as per the annual production capacity as determined by the Jurisdictional Commissioner, the question whether the credit would be admissible or not, can be kept pending with the Adjudicating Authority. It appears from the report filed today by the learned DR that M/s. Guru Arjun Iron & Steel Rolling Mills has not discharged the duty liability

fully as per ACP determined by the Commissioner for the material period. There is nothing on record to show that the ACP determined by the Commissioner is under challenge or not. It appears that the ACP has become final and binding on M/s.

Guru Arjun Iron & Steel Rolling Mills. The Adjudicating Authority, in the instant case, shall allow the deemed Modvat credit on the inputs supplied by M/s. Guru Arjun Iron and Steel Rolling Mills as and when the appellants adduce evidence of full discharge of duty liability by the input manufacturer for the material period. In respect of the deemed credit taken by the appellants on the inputs supplied by M/s.

Malhotra Industrial Corp., it appears from the JDR's report that M/s.

Malhotra Industrial Corp has not discharged duty liability as per the ACP determined by the Commissioner and the appeal preferred by them against the Commissioner's determination of ACP is pending with this Tribunal. The Adjudicating authority in the instant case shall allow the deemed credit as and when the appellants adduce evidence of discharge of duty liability by M/s. Malhotra Industrial Corporation in terms to Tribunal's order in the cited appeal. In relation to M/s. Raj Steel Rolling Mills, the JDR's report shows that there is a short-payment of duty by that party for the relevant period; that the Commissioner's determination of ACP of M/s. Raj Steel Rolling Mills was set aside by this Tribunal and the matter remanded for fresh determination of ACP to the Commissioner; that the Department filed a Reference application against the order of the Tribunal to the Jurisdictional High Court and that the High Court has since allowed the application. The Adjudicating Authority in this case shall allow the deemed credit on the inputs supplied by M/s. Raj Steel Rolling Mills as and when the appellants adduce evidence of discharge of duty liability by M/s. Raj Steel Rolling Mills for the material period in terms of decision of the High Court read with the order of this Tribunal. In relation to M/s. Baba Balak Nath Pvt. Ltd. the JDR's report indicates a short-payment of duty by that party for the material period. The Adjudicating authority in this case shall allow the deemed credit to the appellants as and when they adduce evidence of discharge of duty liability by M/s. Baba Balak Nath Pvt. Ltd. for the material period. It goes without saying that the Adjudicating Authority

shall give the appellants a reasonable opportunity of being heard before taking final decision.

7. In disposing of the matter in the above terms, I have taken note of the fact, that, in the invoices issued by M/s. Raj Steel Rolling Mills, there was no declaration of duty liability at all and in the invoice issued by the other three input-manufactures, the declaration was "duty liability to be discharged under Rule 96ZP". Apparently, the appellants had not fulfilled one of the conditions under Notification No.58/97-CE. No arguments have been advanced on the legal interpretation of that condition.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com