

Super Auto India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-08-2002

Reported in : (2003)(87)ECC178

Judge : P Bajaj

Appellant : Super Auto India Ltd.

Respondent : Cce

Judgement :

2. The issue involved in the appeal relates to the availability of the modvat credit in respect of the furnace oil, used as fuel in the manufacture of dutiable final products as well as exempted final products, by the appellants, 3. This issue apparently appears to be covered in favour of the appellants by the Tribunal's judgment in Indore Steel & Iron Mills Ltd. v. CCE, Indore, 2002 (51) RLT-174, Therefore, the stay petition of the appellants is allowed.

4. With the consent of both the sides, I proceed to hear the appeal on merits also.

5. The impugned order of the Commissioner (Appeals) dated 23.7.2002 shows that he had dismissed the appeals of the appellants against the Orders-in-Original dated 28.2.2002 passed by the Deputy Commissioner disallowing them the Cenvat credit of Rs. 5,33,561.32 and Rs. 4,33,040 and imposing penalty of Rs. 1,00,000 in each appeal under Rule 173Q, under Section 35-F of the Act on the ground that they had failed to make pre-deposit of Rs. 11,66,601 which they were

directed to do vide Stay Order dated 23.5.2002, The appellants even filed an application for modification of the said stay order of the Commissioner (Appeals) but they were directed to avail proper remedy instead of considering that application on merits.

6. The perusal of the Orders-in-Original shows that the Cenvat credit was availed by the appellants on the input furnace oil, used by them in the manufacture of job work goods cleared, without payment of duty as well as in self manufactured goods cleared by them, on payment of duty under Rule 57-1 and 57AH of the Rules. But this issue appears to be covered in favour of the appellants by the ratio of law laid down by the Tribunal in Indore Steel & Iron Mills Ltd. v. CCE, Indore (supra) and by the Final Order No. K/842/02 dated 4.7.2002 in the case of M/s.

Hamer Forge v. CCE, New Delhi and Jindal Polymers v. CCE, Meerut-III, 2001 (43) RLT 680. Since the Commissioner (Appeals) has not decided the appeals on merits and had only dismissed the appeals under Section 35-F, the matter deserves to be sent back to the Commissioner (Appeals) for rendering the decision on merits, without insistence on the pre-deposit, as the appellants have strong prima facie case in their favour covered by the above referred judgments.

7. Consequently, the impugned order of the Commissioner (Appeals) is set aside and the matter is sent back to the Commissioner (Appeals) for deciding the appeals on merits without insistence of the pre-deposit of the entire or any part of the Cenvat credit amount in dispute, after hearing both the parties. The appeals are allowed by way of remand.

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