

Sail (D.S.P.) Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Mar-21-2003

Reported in : (2003)(89)ECC549

Judge : A Wadhwa, S T C.

Appellant : Sail (D.S.P.)

Respondent : Cce

Judgement :

1. Vide the impugned order Commissioner of Central Excise has confirmed the demand of duty of Rs. 42.51 crores against the appellant and has imposed identical amount of personal penalty.

2. As per facts on record appellants were issued a show cause notice dt. 24.1.2000 by the Additional Director General, DGAE (C.Ex.), Calcutta alleging that the appellants have violated the provisions of Rule 57R(8), (Erstwhile Rule 57R(5)) and as such they are not entitled to take modvat credit in respect of the capital goods. For better appreciation we reproduce the said rule; "In terms of the Rule 57R(8), erstwhile Rule 57R(5) -- No credit of the specified duty paid on the capital goods, shall be allowed if such manufacturer, claims depreciation under Section 32 of the I.T. Act, 1961 (43 of 1961), or as revenue expenditure any other section of the said I.T. Act, in respect of that part of the value of capital goods which represents the amount of specified duty on such capital goods".

3. Shri Debasish Lahiri, Manager (Finance) appearing for the appellant submits that they had not claimed that part of the value of the capital goods which represents the amount of specified duty on capital goods as revenue expenditure in their profit and loss account. In other words the quantum of modvat credit claimed by them in respect of the various capital goods have not been claimed by them as revenue expenditure.

This fact is admitted in the show cause notice. However, the notice alleges that since they have paid the Central Excise Duty on their final product out of the modvat credit availed on the capital goods and have claimed the said Central Excise Duty paid on the final product as revenue expenditure, the same would amount indirectly claiming the modvat credit as revenue expenditure and thus violating the said rule making them disentitled to the benefit of the modvat credit. He submits that such an interpretation of the said rule is neither justified nor warranted. The said rule only requires the assessee not to claim the modvat credit availed by them as revenue expenditure. It has no connection with payment of duty on excise on the final product. Payment of duty on the final product is claimable as revenue expenditure under the Income tax provisions and the interpretation adopted by the Revenue is too far-fetched and is unambiguous. He further submits that though this was the ground in the show cause notice for denying them the benefit of the modvat credit, Commissioner has not dealt with the same and has passed order against them by simply observing as if they have claimed the modvat credit availed in respect of capital goods as revenue expenditure under the Income Tax Act. He submits that the adjudicating authority has proceeded on altogether incorrect facts which are against the show cause notice itself. As such he prays that the unconditional stay be granted.

4. We have also heard Shri A.K. Mondal, Ld. SDR appearing for the Revenue who reiterates the Collector's reasoning.

5. After giving our careful consideration to the issue involved we 'prima facie' agree with the appellant that Rule 57R(8) only requires the assessee not to claim the credit availed in respect of the capital goods as revenue expenditure under the Income Tax Law. Once the said condition is satisfied they become entitled to the

credit. The use of that credit for payment of duty of excise on the final product is available to them under the modvat provisions and the mere fact that such excise duty in turn has been shown as revenue expenditure will not amount to showing the credit as revenue expenditure. As such we are of the view that the appellants have a good prima facie case in their favour and allow the stay petition unconditionally.

6. I have carefully gone through the order drafted by my learned sister. The issue raised in this appeal involves substantial question of law, the appellants are a public sector steel company going through financial difficulties, and prima facie, the penalty of Rs. 42.51 crores imposed against the appellants appears to be excessive. For these reasons, I agree with my learned sister in allowing the stay petition filed by the appellants unconditionally. However, I am unable to agree with the observation recorded by my learned sister to the effect that "the mere fact that such excise duty in turn has been shown as revenue expenditure will not amount to showing the credit as revenue expenditure." Prima facie, it appears that under Rule 57R a manufacturer becomes ineligible for modvat credit of duty paid on capital goods when he shows such duty as revenue expenditure, either as such directly, or after using credit of such duty for paying excise duty on the finished goods. Any other interpretation will render the amendment made to Rule 57R redundant, as in every case a manufacturer can utilize such credit for paying excise duty, and then claim the same as revenue expenditure for Income Tax purposes, and yet escape the mischief of the amended provision. In my view, prima facie, such an interpretation which renders the amendment totally redundant is not warranted.

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