

Commissioner of Central Excise Vs. Lloyds Metals and Engineering Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-30-2003

Reported in : (2003)(159)ELT1144Tri(Mum.)bai

Judge : J Balasundaram

Appellant : Commissioner of Central Excise

Respondent : Lloyds Metals and Engineering Ltd.

Judgement :

1. The above appeals arising out of separate orders of the Commissioner of Central Excise (Appeals) involve a common issue and are hence heard together and disposed of by this common order.

2. In all these cases orders were passed by the Additional Commissioner, Nagpur extending the benefit of modvat credit under Rule 57A/capital goods credit under Rule 57Q on different items. The Commissioner of Central Excise, Nagpur reviewed such orders in terms of Section 35E(2) of the Central Excise Act, 1944, in order to satisfy himself as to the legality, propriety and correctness of the said order and found that the order in adjudication is not legal proper and correct; and therefore directed the Assistant Commissioner to file an application in proper form with the Commissioner of Central Excise (Appeals), Bhopal in terms of Sub-section (4) of Section 35E of the Act. Appeals were preferred before the Commissioner of Central Excise (Appeals), Bhopal who held that the appeals filed by the department were not maintainable as direction of the Commissioner of

Central Excise to the Assistant Commissioner to file appeal to the Commissioner of Central Excise (Appeals) against the Additional Commissioner's order was not legal and valid under Section 35E(2) of the Act. Hence these appeals by the Revenue.

3. I have heard Shri A. Shukla, learned SDR for the Revenue and the representatives of the respondents as mentioned above.

"The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order." 5. According to the Revenue the expression "such authority" used above is also to be qualified by the clause "as may be specified by the Commissioner of Central Excise in his order". Reference is also made to Section 35E(4) which provides that an application to the Appellate Tribunal or the Commissioner (Appeals) can be made by the adjudicating authority or the authorised officer and the submission of the Revenue is that the mentioned of 'authorised officer' in addition to adjudicating authority was necessitated because of the possibility of the Commissioner authorising another officer subordinate to him, other than the adjudicating officer, to file an appeal under Section 35E(2).

Reliance is also placed by the learned SDR on the decisions of the Tribunal in the case of CCE v. Falcon Tyres Limited 1997 (91) ELT 649 wherein the Tribunal held that Section 35E(2) requires a broad interpretation, reading it in harmony with Section 35E(4) of the Act and that the Collector can issue direction to the adjudicating officer or any other officer and the officer directed by the Collector or an officer authorised by the latter can file the application; and Sun Export Corporation v. CC 1989 (42) ELT 308 wherein it was held that a harmonious construction of the provisions of two Sub-sections 129D(2) and 12D(4) of the Customs Act, 1962 would indicate that in case where the adjudicating authority is

unavailable for being directed, it is reasonable to conclude that the direction can be fulfilled by another Customs Officer authorised by the Collector, although he may not be the officer who adjudicated the case. It is therefore prayed by the learned SDR that the impugned order may be set aside and the matter be remanded for denovo consideration on merits.

6. The prayer is opposed by the respondents who relied upon the decision of the Tribunal in the case of Dhampur Sugar Mills v. CCE, Meerut 1999 (108) ELT 498 (which has been followed by the lower appellate authority) and CCE, Aurangabad v. Flexoplast Abrasives (I) Ltd. 2003 (55) RLT 233 in support of their contention that appeal against Additional Commissioner's order should have been filed only by the Additional Commissioner under authorisation from the Commissioner, and not by the Assistant Commissioner under authorisation from the Commissioner.

7. I have carefully considered the rival submissions. I note that in the case of Dhampur Sugar Mills v. CCE, Meerut the Tribunal has held that: "Section 35E(2) contemplates only one authority whose orders or decisions can be called for and examined by the Collector and that authority can be only an adjudicating authority subordinate to him.

After examination of the record, the Collector has to satisfy himself as to the legality or propriety of any such decision or order. Thereafter he has to direct 'such authority' to apply to the Collector for determination of such points arising out of the decision or the order as may be satisfied. There is no provision under that subsection for giving the direction to any other authority to make an application to the Collector (Appeals)." 8. In the case of CCE, Aurangabad v. Flexoplast Abrasives (I) Ltd. cited supra the breach followed the earlier decision in the case of Supreme Industries v. CCE, Indore 1999 (114) ELT 1003 which in turn has relied upon the Dhampur Sugar Mills v. CCE, Meerut decision cited supra. Baron International Ltd. v. CCE, Vadodara 2002 (143) ELT 112 also notes the Dhampur Sugar Mills v. CCE, Meerut decision in which the expression "such authority" has been interpreted as officer of the same level as the one who had passed the adjudication order (in Baron International's case the point raised by the appellants was that the very Commissioner who passed the adjudication order must be the

person filing the application, which objection was overruled by the bench.)Malhotra Steel Products v. CCE, Mumbai-III the adjudication order was passed by the Additional Commissioner; the Commissioner had directed the Assistant Commissioner to file an application before the Commissioner (Appeals); the Tribunal held that the proceeding is defective following the judgment in the case of Dhampur Sugar Mills case cited supra.CCE v. Falcon Tyres Limited and Sun Export Corporation v. CC relied upon by the learned SDR do not advance the case of the Revenue as neither of these decisions has noted the Supreme Court decision in the case of Collector v. M.M. Rubber Co. 1991 (55) ELT 289 (SC) while in the Dhampur Sugar Mills decision the above Supreme Court judgment has been relied upon.

12. Following the ratio of the Tribunal's order in the case of Dhampur Sugar Mills and Malhotra Steel Products I uphold the findings of the lower appellate authority that the appeals filed before him by the department were not maintained and rejected these appeals.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed on electrical goods under Rule 57Q Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed on CTD bars, flats, plates, sheet under Rule 57Q Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Classification of PVC profile under head 84 18.90 Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit

availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Depreciation claimed in respect of goods on which Modvat credit availed under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed on electrical goods, transformer under Rule 57Q., Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Excisable goods removed clandestinely.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed for disallowance of modvat credit on zinc ingots under Rule 57A on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on waste and paring of plastic cleared without payment of duty.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on refractory cements, chemical products under Rule

57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on tundish board and tyre tubes under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed for confirmation of duty on resin on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 3S-E(2) without considering the merits of the case. Modvat credit availed on inadmissible inputs viz., Flux/Chemicals under Rule.57A. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed electrical goods and steel tubes under Rule 57Q Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 3S-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation tinder Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on improper documents.

Commissioner (A) has rejected the departmental appeal filed for imposition of penalty on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case Modvat credit allowed on refractory material under Rule 57A Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on improper documents .

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed electrical goods under Rule 57Q Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed on the strength of duplicate copy of bill of entry.' Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on improper documents.

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Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed electrical goods under Rule 57Q Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit allowed on the strength of duplicate copy of bill of entry.' Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Mod vat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section

35-E(2) without considering the merits of the case. Modvat credit availed on refractory bricks under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case, Modvat credit availed on electrical goods under Rule 57Q Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q Mundra Plywood E/CO Ltd. 146/21DOI-Mum Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. i.e, Modvat credit before installation of machine in the factory.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Assessee fails to produce proof of export Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Penalty not imposed for suppression of production Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on coning oil under Rule 57A. Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed for credit availed on cables, RH relay electric circuit breaker, winding wheel under Rule 57Q on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on inputs chemicals products, foundry fluxes under Rule 57A. Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal on, the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on blower, electrical goods under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on Foundry flux, chemical under Rule 57A. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on improper documents.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on machines under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation

under Section 35-E(2) without considering the merits of the case, ie., Modvat credit availed on electrical wires and cable, electrical goods.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case, Modvat credit availed on electrical goods and spare parts under Rule 57Q. Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Modvat credit availed on glass bottle under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case i.e, inadmissibility of modvat credit on spare parts, electrical goods, EOT cranes under Rule 57Q. Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case.

Commissioner (A) has rejected the departmental appeal filed on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case, ie., Modvat credit availed on electrical wires and cable, electrical goods, synthetic cloth under Rule 57Q. Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Clandestine removal of goods.

Commissioner (A) has rejected the departmental appeal on the ground of improper authorisation under Section 35-E(2) without considering the merits of the case. Clandestine removal of goods.

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