

Commissioner of C. Ex. Vs. Knitwell India Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-2003

Reported in : (2003)(158)ELT626TriDel

Judge : P Bajaj

Appellant : Commissioner of C. Ex.

Respondent : Knitwell India Pvt. Ltd.

Judgement :

1. In this appeal which has been filed by the Revenue against the impugned order-in-appeal, the issue relates to the availability of deemed credit in respect of the inputs to the respondents, on which duty liability has not been allegedly discharged in full by the supplier/manufacturer under Section 3A, but received by them under Notification No. 58/97-CE., dated 30-8-1997.

2. The learned Commissioner (Appeals) by following the ratio of the law laid down by the Tribunal in an identical case of Delhi Steel Indus, v.CCE, Chandigarh [2002 (149) E.L.T. 673 (Tri. - Del.) = 2002 (48) RLT 753] in which this very issue arose, had allowed the deemed credit to the respondents by reversing the order-in-original of the Asstt.

Commissioner who disallowed the credit of the amount in question i.e.

Rs. 40,813/- and imposed penalty of Rs. 10,000/- under Rule 173Q.3. The learned JDR has contended that the above said judgment of the Tribunal could not be

followed by the learned Commissioner (Appeals) on two grounds; firstly, that the reference application against that judgment filed by the Revenue before the Hon'ble High Court is still pending; and secondly, that the interpretation of the notification in that judgment by the Tribunal has been made in a peace meal manner, by ignoring the principle regarding interpretation of the notification as laid down by the Apex Court in the case of Union of India v. Wood Papers Ltd.,(S.C.) and Mihir Textiles Ltd. v.C.C., Bombay - 1997 (92) E.L.T. 9 (S.C.), that exemption notification had to be interpreted strictly and not liberally, and that the notification has to be read as a whole. But, in my view, this contention of the learned JDR is not liable to be accepted. It can hardly be disputed that the issue involved in the present appeal stands squarely covered by the ratio of the law laid down by the Tribunal in the case of Delhi Steel Indus., supra, which has been followed by the Commissioner (Appeals). The inputs had been received by the respondents under Notification No. 58/97-C.E., dated 30-8-1997. The interpretation of that notification has been made in the said case by the Tribunal wherein it has been observed that the deemed credit on the ground of absence of input manufacturers' declaration in terms of Para 4 of the notification, cannot be denied to the recipient of the inputs which were deemed to be duty paid under that notification. This judgment of the Tribunal so far has neither been reversed nor altered/modified by the Hon'ble High Court or the Apex Court. No doubt reference application filed by the Revenue against that judgment is said to be pending before the Hon'ble High Court, but the operation of that judgment had not been stayed so far. Therefore, the judgment of the Tribunal still holds the field and is binding on the Revenue and the learned Commissioner (Appeals) had rightly followed the same.

4. The plea of the Revenue which has been reiterated by the learned JDR before me that the interpretation of the notification in question had not been properly done by the Tribunal in the above said case by keeping in view the Apex Court's decisions, in the above referred cases, cannot be accepted. The Apex Court in the case of Mihir Textiles Ltd., supra, relied upon by the Revenue had only observed that the exemption notifications have to be interpreted strictly and not liberally and that the notification had to be read as a whole. This rule of interpretation has to be followed for interpreting the exemption notifications, but the notification in question which is not an exemption notification. The Tribunal in the case of Shivagrigo

Implements Ltd. v. C.C.E., Jaipur-I, [2002 (149) E.L.T, 716 (Tri. - Del.) = 2001 (44) RLT 853], has also observed that for the interpretation of notification in question i.e. 58/97-C.E., the rule of strict interpretation laid down by the Apex Court is not applicable.

Moreover, the judgment of the Tribunal in the case of Delhi Steel Indus., supra, in which the interpretation of the notification has been made, so far holds good, is to be accepted by the Revenue. The Commissioner (Appeals), as observed above, has rightly followed the same.

5. In view of the discussion made above, in my view, no illegality has been committed by the learned Commissioner (Appeals) by following the above referred Tribunal's judgment which squarely covers the case of the respondents. Therefore, the impugned order passed by him is perfectly valid and the same is upheld.

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