Bharat Forge Limited Vs. Commissioner of Central Excise

Bharat Forge Limited Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/32657

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-13-2003

Reported in : (2004)(165)ELT339Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Bharat Forge Limited

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides on the application for waiver of predeposit of duty of Rs. 31,87,359/- and penalty of Rs. 10 lakhs we find that if was possible to decide the appeal itself at this stage as the issue in dispute is covered by two circulars of the CBEC. Hence after waiving pre-deposit of duty and penalty we proceed to hear and dispose of the appeal with the consent of both sides.

2. The issue in dispute is the admissibility of the Cenvat credit after 01/04/2000 on capital goods used in the manufacture of intermediate products, namely, dies, which carry nil rate of duty under Notification 67/95-CE then used further in the manufacture of the appellants' final products which were cleared on payment of duty. It is the case of the department that w.e.f. 01/04/2000 Cenvat credit is not available to exempted goods whether final products or intermediate goods.

3. On hearing both sides we find that the position stands clarified by the CBEC circular dated 03/04/2000 in which the Board has clarified that Cenvat credit

should not be denied if the inputs are used in the intermediate of the final products even if the intermediate is exempt from payment of duty. Circular No. 665/56/2002-Cx dated 265/09/2002 is also relevant, which clarifies that Cenvat credit should not be denied on capital goods used in the manufacture of intermediate goods exempt from payment of duty which are used captively in the manufacture of finished goods chargeable to duty. In other words these circulars clarifies that even if the intermediate product is exempt from payment of duty, as long as the final production which the intermediate products are captively consumed carry duty and cleared on payment of duty then Cenvat credit is admissible on the inputs, machinery, goods used in the manufacture of exempted products. Since these circulars cited supra cover the issue in dispute we hold that the appellants are eligible to the amount of credit in question and set aside the impugned order for recovery of Cenvat credit and imposition of penalty and allow the appeal.