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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-16-2003

Judge : S T Gowri

Appellant : Commissioner of Central Excise

Respondent : Maruti Textiles Pvt. Ltd.

Judgement :

1. The assessee, Maruti Textiles Pvt Ltd, was engaged in the manufacture of processing of textile fabrics. It took modvat credit of the duty deemed to have been paid on the inputs used in the manufacture of its finished product, utilising it towards payment of duty on such fabrics. It applied for refund of the credit taken by it in the quarter ending October 1998 available on the inputs used by it in the manufacture of fabrics which it exported, as permitted under Sub-rule (13) of Rule 57F. The claim was rejected by the Assistant Commissioner on various grounds.

2. The assessee appealed this order. The Commissioner (Appeals) was of the view that the basis for the denial was not in order and allowed.

Hence this appeal by the Commissioner.

3. The counsel for the respondent says that, whether the assessee was entitled to the refund in cash of the credit, is not really material; the Commissioner (Appeals) has said in his order that the amount of credit which is at the balance of the assessee can now be utilised towards payment of duty on the finished fabrics that

it manufactured in terms of the provisions of notification 7/2001. It is necessary to explain on this point that, with effect from 16 December 1998, the assessee and others similarly placed was not entitled to utilise the modvat facility. From this date onwards it opted for compounded levy scheme - i.e. the payment of fix sum of duty monthly irrespective of the quantity of fabrics cleared by it calculated upon its capacity to manufacture. Subsequently, the assessee chose not to avail of this compounded levy and interested to pay duty in the normal fashion.

Therefore, it would be entitled to deemed credit in terms of the rules specified in notification 7/2001.

4. The departmental representative's objection is that when the assessee elected to avail of the compounded levy scheme, modvat credit elapsed and it cannot now revive. To this, the answer of the counsel for the respondent is to rely upon the judgment of the Supreme Court in Eicher Motors Ltd v. Union of India 1999 (106) ELT 3. In this judgment it has been held that the vested right accrued to or acquired by the manufacturer when the inputs were received in its factory, that right became absolute when the input is used in the manufacture of final product and alteration of the scheme by reducing the amount of credit that can be taken, in the case before the Court (did not effect this right.) The situation of fact before me is slightly different. The assessee's vested right accrued was not affected by any act of executive or change in the rules but it chose to avail of a different procedure. Further, Sub-rule (1) of Rule 57AG, as it stood when the Commissioner (Appeals) passed his order, provided that any credit earned by a manufacturer under Rule 57A, 57B or 57Q, as they existed prior to 2000, and remaining unutilised shall be allowed as cenvat credit. There is therefore no reason why the Commissioner (Appeals)' order that the assessee is entitled to take credit accrued to it earlier calls for interference. This is in fact the view taken by the Tribunal in its order disposing of appeal against the earlier order of the Commissioner (Appeals) in Laxminarayan Industries in appeal 1464/02. This will however dispose of the grounds in the department's appeal that the reliance by the Commissioner (Appeals) on his earlier order in Laxminarayan Industries is incorrect because it had been appealed to the Tribunal

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