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Associated Transrail Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-09-2003

Reported in : (2004)(177)ELT557Tri(Mum.)bai

Judge : S T Gowri

Appellant : Associated Transrail

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant was engaged, as a job worker, in the manufacture of steel structurals. It received raw materials for making such goods from Tata Projects Ltd. The appellant took deemed credit as provided in notification 58/97. The notification declares the duty shall be deemed to have been paid on inputs specified therein at 12% of the price declared by the manufacturer in the invoice accompanying the goods credit of the duty shall be allowed to the manufacturer of the final product. The notification provides that it shall not apply to inputs where the manufacturer of the inputs has not declared in invoice price correctly in the documents. The explanation to the notification defines "invoice price" charged by the inputs accompany the said inputs "the payment of duty made directly by the manufacturer of the final product to the manufacture of the said inputs (by cheque drawn on his own bank or bank draft or banker's cheque. Notices issued to the appellant proposed to deny the credit on the ground that the payment for the goods have been made not by the appellant but by Tata Projects Ltd and therefore the condition contained in paragraph 5 of the notification has not been complied.

The Assistant Commissioner, whose order has been confirmed on appeal by the Commissioner (Appeals), confirmed the denial of the credit and imposed a penalty on it. Hence these appeals.

2. The counsel for the appellant contends that the condition in paragraph 5 of the notification is the one of simple procedural and not substantive condition and if literal interpretation given in it by the Commissioner (Appeals) is confirmed, would result in a situation in which no job worker or a person who captively utilising he inputs could take credit. He cites a decision of the Tribunal in Shiv Agrico Implements Ltd v. CCE 2002 (149) ELT 716 in support. He contends, in the alternative, that the extended period of limitation invoked in the notices could not apply because the appellant would have gained nothing by suppressing the fact.

3. The departmental representative seeks to distinguish the Tribunal's decision.

4. In that decision, the Tribunal has held that the condition contained in paragraph 5 of the notification is procedural and its non compliance in a case where the appellant before it availed credit on goods that it manufactured and captively consumed was condonable. No doubt, the decision deals with a case where the assessee took credit on input that it captively consumed. However, in its decision the Tribunal, after considering various judgements of the Supreme Court specifically construed the notification in such a manner as to lead to justice and avoid hardship. Judicial discipline requires to me to abide by the ratio of this decision. I do not find that it only applies, as the departmental representative contends, to a case of captive consumption.

It will therefore follow that the appellant was entitled to take credit.

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