

Cce Vs. T. Srinivas and Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Dec-19-2003

Reported in : (2004)(114)LC479Tri(Bang.)alore

Judge : G B Deva, M T K.C.

Appellant : Cce

Respondent : T. Srinivas and Co.

Judgement :

1. This is an appeal filed by the Revenue against the Order-in-Appeal No. 118/02 (H-III) CE dtd. 31.10.2002 passed by the Commissioner of Central Excise (Appeals), Hyderabad.

2. M/s. T. Srinivas & Co., Hyderabad are manufacturer of packaged Tea in various packings falling under sub-heading 0902.10 of Central Excise Tariff Act, 1985. They were availing modvat credit on inputs/packing materials used in the manufacture of the final product package tea.

With effect from 18.7.98, packaged tea in packings up to 100 grams were exempt from payment of duty under Notfn. No. 17/98 dtd. 18.7.1998. The respondents had a balance stock of packaged tea in packings up to 100 grams on this date and they were also having various inputs on which they were taking modvat credit, they were asked to reverse the credit taken on the inputs used in the manufacture of such packaged tea as Rule 57(i) of Central Excise Rule, 1944 does not allow

modvat credit on inputs used in manufacture of final products which are exempt from payment of duty or chargeable to nil rate of duty. Show Cause Notice was issued to them and the Assistant Commissioner confirmed the demand of Rs. 3,54,433/- under Rule 571 of Central Excise Rules, 1944 and imposed a penalty of Rs. 30,000/-. However, the Commissioner (Appeals) allowed the appeal of the respondents under the impugned order.

3. Shri Narasimha Murthy, Ld. JDR appeared for the Department and Shri B. V. Kumar, Ld. Advocate appeared for the respondents.

4. Shri Narasimha Murthy pleaded that no credit of specified duty is allowable on such quantity of inputs which is used in the manufacture of final products exempt from duty as provided under Rule 57C of the Central Excise Rules, 1944 at the relevant time. He also relied upon the decision of the Tribunal in the case of Albert David Ltd. v. CCE, Meerut wherein it was held that "Cenvat scheme is a scheme to remove the cascading effect of the Central Excise duty as the same is levied at each stage of manufacture. The Credit is available only and only if the final product suffers the excise duty.

If no excise duty is payable in respect of any final product, the question of availing the cenvat credit does not arise as there is no duty of excise at more than one level. A harmonious reading of Rules dealing with Cenvat scheme and particularly Rule 57AC and 57AD of the Central Excise Rules, 1944 makes it very evident that Cenvat credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods.'

5. Shri B.V. Kumar, Ld. Counsel for the respondents on the other hand pleaded that in the case of CCE, Rajkot v. Ashok Iron & Steel Fabricators has gone by the observation that "A manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately It makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules, which provides for a reversal of credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. Here, the credit has been validly

taken and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product, the credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material & final product." 6. We have carefully considered the submissions made by both sides. We find that in case of CCE, Rajkot v. Ashok Iron & Steel Fabricators , the Larger Bench of the Tribunal has accepted that a manufacturer obtains credit of excise duty paid on raw material to be used by him in production of an excisable product immediately, for which makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit anytime thereafter when making payment of excise duty on excisable product. There is no provision which provides for reversal of the credit by the excise authorities except where it has been illegally or irregularly taken in which even it stands cancelled or if utilized has to be paid for. Here, credit has been rightly taken and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. This decision of the Tribunal has been upheld by the Supreme Court as . In view of this decision of the Hon'ble Supreme Court, the decision of Commissioner (Appeals) is legal and proper and the appeal of the Department is dismissed.

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