Zenith Processing Mills and Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-09-2004

Reported in : (2004)(178)ELT286Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : Zenith Processing Mills and

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in these two appeals being common, they are being disposed off by this common order. After hearing both sides and considering the material, it is found - a) The issue is what happens to the credit balances in the Modvat Registers as on 16.12.1998 when MMF processor manufacture moved over to the levy scheme under Section 3A of the Central Excise Act, 1944, and also if this credit balance would be eligible for transfer on 01.04.2001 when the very same processors shift to levy under Section b) The issue of no lapse of credit in balance, on Modvat Registers has been settled by the decision of the Supreme Court in the case of Eicher Motors Ltd. {1999 (106) ELT 3 (SC)}. Subsequent to mat the law was amended and powers to frame rules as regards lapse of credit were granted by the legislature to the Central Government to retrospectively frame rules for lapse of credit. This power has been exercised by inserting Rule 57F(17) providing for lapse of credit in case of tractor, motor vehicle, billets of non alloy steel, hot rolled products, tooth powder, tooth paste manufacturers and others.

In MMF manufacturer's case, the lapse was not enacted by exercise of this rule making power. Therefore, the credit in balance of a MMF manufacturer could not lapse.

c) Rule 57 AG provided any amount of credit availed and in balance prior to 01.04.2000 and remaining unutilised shall be allowed as CENVAT credit to such manufacturers. Therefore when the credit in the Modvat Register of MMF manufacturer has not lapsed, then such amount credit is not barred from transfer by this rule.

d) The reliance on the decision of CCE Surat 1 v. Laxmi Narayan Industries (C-II/1756/03 - WZB dt 03.07.2003) is well placed and has to be followed, since nothing contrary is shown, to allow this appeal.