

Jil Plastics Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-29-2004

Reported in : (2004)(113)LC861Tri(Delhi)

Judge : S Excise

Appellant : Jil Plastics

Respondent : Cce

Judgement :

1. The appellants were working as a small scale industrial unit till 31.3.2000. From 1.4.2000, they opted for not availing SSI exemption and started paying duty on their final products. There was some stock of inputs as on 1.4.2000, which they used in the manufacture of final products which were cleared on payment of duty. Modvat credit on such inputs amounting to Rs. 92,862/- has been disallowed to the appellants by both the lower authorities. Hence the present appeal.

2. Ld. counsel for the appellants submits that there is no dispute either of the duty-paid nature of the inputs of utilization thereof in the process of manufacture of final products cleared on payment of duty. Hence the input duty credit should have been allowed. Ld. counsel relies on the Board's Circular No. 345/2/2000-TRU dated 29.8.2000. Para 5 of the Circular reads as under: Doubts have been expressed whether CENVAT credit in respect of the inputs lying in stock, Inputs contained in the finished goods lying in stock and the inputs in process on the date when as SSI unit is required to pay excise duty after crossing the exemption limit

of Rs. 100 lakhs is admissible or not. In this context, it is clarified that when the SSI unit clears the goods at nil rate or 5% rate up to an aggregate clearance of Rs. 100 lakhs, it is on the condition that no CENVAT credit is taken on the inputs used in such goods. Once the limit of Rs. 100 lakhs is over and the unit starts paying full duty, the CENVAT credit is admissible. In the CENVAT scheme also, CENVAT credit can be taken on the inputs on which duty has been paid.

Accordingly, once the embargo, which is applicable because of the SSI exemption notification, is lifted, the SSI unit eligible to take CENVAT credit in respect of inputs lying in stock, on the inputs contained in the finishing goods lying in stock and on the inputs in process. This would apply equally to any other assessee (NON-SSI) who begins to pay duty in the middle of the year. For this purpose, it is obligatory on the assessee to quantify the amount of admissible credit on the basis of documentary evidence and records maintained for this purpose.

Ld. DR on the other hand, refers to para (9) of the same circular. The said para (9) mainly deals with credit on capital goods. It also refers to input duty credit and clarifies as under: It has also been reported that in some cases the inputs were received in the factory on or before 31.3.2000 but credit was not taken for some reason. It is clarified that in the situations mentioned, even though the Modvat credit was not taken by the manufacturer, the Modvat credit had been "earned" by the manufacturer and, therefore, the manufacturer is entitled to take the CENVAT credit of this amount under Rule 57AG(1) Ld. Commissioner (Appeals) has denied the credit to the appellants by referring to para (9) of the Board's circular and holding that appellants' case is distinguishable from the factual situation mentioned in para (9). Obviously, Ld. Commissioner (Appeals) has not only overlooked para (5) of the Board's circular, but has also misunderstood para (9). The above extracts of the Circular clarified that CENVAT credit was admissible in respect of inputs lying in stock on the date when an SSI unit starts paying excise duty on the specified goods after opting out of the SSI scheme. The appellants, admittedly, opted out of the SSI scheme w.e.f. 1.4.2000 and took Modvat credit of the inputs lying in stock on that date. Such credit is clearly admissible to them. The impugned order is set aside and the appeal is allowed.