

Krishna Mohan Beverages and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-2004

Reported in : (2004)(94)ECC313

Judge : P Chacko

Appellant : Krishna Mohan Beverages and

Respondent : Cce

Judgement :

1. The appellants are manufacturers of aerated waters and beverage syrups falling respectively under Chapters 22 and 21 of the CETA Schedule. In terms of Notification No. 21/99-C.E. (N.T.), dated 28-2-99, the appellants were entitled to take credit of Special Excise Duty specified in the Second Schedule to the CETA. This Notification was amended on 1-3-2000 and, consequently, Mod-vat credit of Special Excise Duty could be taken only on certain specified goods w.e.f. the said date. Goods falling under Chapter 21 were not so specified. As the appellants continued to take Modvat credit of Special Excise Duty on their inputs falling under Chapter 21 in March, 2000, the department by show cause notice proposed to disallow the credit. The proposal was contested. The original authority upheld the department's stand and disallowed to the party Modvat credit of Rs. 3,60,967/- taken in respect of their input "Concentrate" on the basis of two invoices, one dated 28-2-2000 and the other dated 12-3-2000. That authority also imposed a penalty of Rs. 10,000/- on the assessee. The appeal preferred by the assessee against the decision of the original authority to the Commissioner (Appeals) did not

succeed. The order of the Commissioner (Appeals) was, therefore, taken in appeal to this Tribunal and the Tribunal remanded the substantive issue raised by the assessee, to the Commissioner (Appeals). The present appeal is against the order passed by the Commissioner (Appeals) in the remanded proceedings.

2. Heard both the sides. Restating the substantive issue in this case, Id. Counsel for the appellants submits that, as the right of the assessee to avail Mod-vat credit of Special Excise Duty on input had accrued to them on the date of clearance of the input under the relevant invoice on payment of such duty by the input-supplier, such right would not be affected by the amendment brought to Notification No. 21/99-C.E. (N.T.). Counsel submits that the amending notification did not provide for retrospective operation of any provision contained therein and hence did not in any way affect the vested right of the assessee as held by the Supreme Court in the case of Eicher Motors Ltd. v. U.O.I. [1999 (106) E.L.T. 3 (S.C.)]. Id. Counsel has referred to Para 6 of the Apex Court's judgment. Reliance is also placed on the Apex Court's decision in Samtel India Ltd. v. CCE, Jaipur [2003 (155) E.L.T. 14 (S.C.)]. Referring to the Board's Circular dated 31-3-2003 relied on in the impugned order, Counsel submits that the said Circular has been set aside by the Karnataka High Court in the case of Grasim Industries Ltd. v. C.B.E. & C, New Delhi 3. Id. DR submits that, in the case of Eicher Motors, the issue related to Rule 57F rather than to Rule 57A and, therefore, the Apex Court's ruling may not be applicable to the instant case involving Rule 57A. DR reiterates the argument with reference to Samtel India (supra) which followed Eicher Motors (supra). Referring to the facts of the case, Id.DR submits that, even on the basis of the case law cited by the Id.Counsel, the credit taken by the assessee on the strength of invoice dated 12-3-2000 would not be admissible to them inasmuch as the duty on the input covered by that invoice was paid after 1-3-2000.

4. I have carefully examined the submissions and the case law cited. A part of the credit in question was taken on the strength of invoice dated 28-2-2000 issued by the input-manufacturer. There is no dispute of the fact that the Special Excise Duty on the "Concentrate" covered by this invoice was paid before 1-3-2000. The Apex Court's ruling as stated in Para 6 of the judgment in Eicher Motors (supra) appears to be relevant in this context. The said Para 6 reads as under :- "6. We may look at

the matter from another angle. If on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the rule cannot be applied to the goods manufactured prior to 16-3-1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods." According to the above ruling, a right to take credit of the Special Excise Duty paid on the "Concentrate" cleared by its manufacturer to the appellants under cover of invoice dated 28-2-2000 accrued to the latter on 28-2-2000 itself and such right continued until the Modvat facility in respect thereof got worked out. The facility would work out only with the availment of credit for payment of duty on final product.

As the amending Notification dated 1-3-2000 did not provide for retrospective operation, the above right did accrue to the party on 28-2-2000 and, by virtue of the Apex Court's ruling, subsisted beyond that date till it was extinguished on the date of availment of the credit. Therefore, in respect of special excise duty on the input received by the appellants under cover of invoice dated 28-2-2000, I am of the view that the credit is admissible to them as per the above ruling of the Apex Court. The impugned order has, inter alia, relied on the Board's Circular No. 704/20/2003-C.E., dated 31-3-2003 to deny the Modvat credit to the appellants. As rightly pointed out by the Counsel, the said Circular has been quashed by the Karnataka High Court in the case of Grasim Industries (supra). Thus the order of the Commissioner (Appeals) denying credit on the invoice dated 28-2-2000 is not sustainable and the same is set aside.

5. The situation is, however, quite different in respect of the credit of Special Excise Duty taken on the input received under cover of invoice dated 12-3-2000. In this case, Special Excise Duty on the input was paid on 12-3-2000 only when

credit of such duty was not available to goods of Chapter 21 on account of the amendment to Notification No.21/99. The appellants, therefore, cannot claim any vested right in this case. Accordingly, the credit of Special Excise Duty taken on the invoice dated 12-3-2000 is not admissible as rightly held by the lower authority.

6. Right or wrong, the appellants had taken the credits on the basis of their own understanding of the meaning of the Notification. In such a situation, no mens rea can be attributed to them. Therefore, I do not find any justification in penalising the appellants on the facts of this case. The penalty, therefore, will be set aside.

7. In the result, the appeal is allowed only to the extent of setting aside the impugned order in relation to penalty as well as Modvat credit taken by the appellants on the strength of invoice dated 28-2-2000. The impugned order will stand modified to this effect.

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