

Cce Vs. Dynamite Technology

Cce Vs. Dynamite Technology

SooperKanoon Citation : sooperkanoon.com/34351

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-27-2004

Reported in : (2004)(95)ECC251

Judge : S Peeran

Appellant : Cce

Respondent : Dynamite Technology

Judgement :

1. Revenue is aggrieved with Order-in-Appeal No. 164/2002 (M-II) dated 7.11.2002 by which the Commr. (A) has allowed modvat credit in respect of aluminium waste and scrap (i.e. runners & risers) generated out of ingots during the manufacturing process sent to the job workers for conversion into ingots for use as inputs under Rule 57F(4) procedure without payment of duty. The Commissioner (Appeals) has followed the ratio of three judgments noted by him in the order. The findings recorded in para-5 of his order is extracted herein below: "5. I have gone through the facts of the case, grounds of appeal, submission made by appellants at the time of PH and the case records sent by the lower authority. The issue to be decided in this appeal is whether Aluminium waste and scrap (i.e. runners & risers) generated out of ingots during the manufacturing process can be sent to job workers for conversion into Ingots for use as inputs under Rule 57F(4) procedure without payment of duty. The identical issue has been decided in the following case-laws.

(i) Chloride Industries Ltd. v. Collector of Central Excise, 1993 (63) ELT 633 (T) (ii) Commissioner of Central Excise, Baroda v. Ex-Protecta, 2999 (112) ELT 76 (T) Wyeth Laboratories Ltd. v. Collector of Centred Excise, Bombay, It has been held by the Honorable Tribunal in the aforesaid case-laws that "option to exercise the routes available under 57F(4) procedures remain with the manufacturer and is not lost by the change in form of the input, due to processing". Respectfully following the ratio laid down by the Honorable Tribunal. I hold that the demand of duty confirmed by the lower authority on the waste and scrap sent under Rule 57F(4) challans is not sustainable and needs to be set aside. Accordingly, I set aside the Order-in-Original and allow the appeal with consequential relief.

2. Revenue contends in this appeal that the judgments are distinguishable and are not in consonance with the Board's Circular No.2/93-CX.8 (From File No. 261/76/2/88-CX.8) dated 12.1.93.

3. Ld. Consultant submits that Larger Bench in the case of Wyeth Laboratories Ltd. v. CCE Bombay, 2000 (120) ELT 218 (T-LB) has already dealt with the above noted Board's circular and has still held that assessee is entitled to take modvat credit. He submits that the Larger Bench judgment fully applies to the facts of the case.

4. I have carefully considered the submissions made by both sides. I notice that the Commissioner (Appeals) has followed the judgment of the Tribunal which is binding on single member bench. The Larger Bench in the case of Wyeth Laboratories Ltd. v. CCE, Bombay (supra) has already dealt with all the grounds raised in this appeal. There is no fresh ground available for consideration. Respectfully following the ratio of the judgment cited by the Commissioner (Appeals) in his order, the Revenue's appeal is rejected as there is no merit in the same. The cross objections filed by assessee is also disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com