

Cce Vs. Explicit Trading and Marketing

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-10-2004

Reported in : (2004)(95)ECC679

Judge : S Kang, a T V.K.

Appellant : Cce

Respondent : Explicit Trading and Marketing

Judgement :

1. This is an appeal filed by the Revenue against Order-in-Appeal No.227/2003 dated 30.6.2003 by which the Commissioner (Appeals) has allowed Modvat Credit to the Respondents M/s. Explicit Trading & Marketing (P) Ltd. 2. When the matter was called noone was present on behalf of the Respondent. Shri Balbir Singh, Learned Advocate, by his letter dated 9.3.2004 has requested for adjournment which is not acceded to in view of the submissions made by the learned SDR that the issue involved has been decided by the decision of the Appellate Tribunal in the case of Albert David Ltd. Vs. CCE, Meerut, 2003 (151) ELT 443 (Tri-Del.) which has been affirmed by the Hon'ble Supreme Court as the Civil Appeal of M/s. Albert David Ltd. has been dismissed as reported in 2003 (157) ELT A81.

3. Shri O.P. Arora, learned SDR, submitted that the Respondent manufactures Fruit/Juice based drinks and mineral water; that their products were exempted from payment of duty w.e.f. 1.3.2001 under Notification No. 3/2001-CE dated 1.3.2001; that the Dy. Commissioner under Order-in-Original No. 13/2001 has

confirmed the demand and imposed a penalty of equivalent amount in respect of CENVAT Credit taken by them on inputs used in the manufacture of finished goods which were lying in stock as on 1.3.2001 as well as the stock of inputs as on 1.3.2001; that the Commissioner (Appeals), under the impugned Order, has set aside the Adjudication Order following the decision of the Larger Bench of the Tribunal in the case of CCE, Rajkot Vs. Ashok Iron & Steel Fabricators, 2002 (140) ELT 227 (T-LB). He, further, submitted that as per Rule 57AB of the Central Excise Rules, 1944 CENVAT Credit cannot be allowed in respect of inputs which is used in or in relation to the manufacture of exempted goods; that the goods manufactured by the Respondents were exempted completely from the payment of duty w.e.f. 1.3.2001, the credit is not admissible to them and is recoverable under Rule 57AH. he relied upon the decision in the case of Super Cassettes Industries Ltd. Vs. UOI, 1997 (94) ELT 302 (Allahabad) and the decision of the Larger Bench in the case of Raghuvir (India) Ltd. Vs. CCE, Delhi, 2002 (140) ELT 280.

4. We have considered the submissions of the learned SDR and perused the records. The Respondent has taken CENVAT Credit at the time when the products manufactured by them were chargeable to Central Excise duty. Subsequently w.e.f 1.3.2001 Fruit Pulp/Juice based drinks manufactured by them were exempted from payment of duty. The Revenue has sought demand only in respect those inputs which were lying unutilized and the inputs which were contained in the finished goods till lying in stock with the Respondents. The inputs which were lying in stock are going to be used in the manufacture of excisable goods which are not wholly exempted from payment of duty. The CENVAT Credit scheme is a scheme to remove cascading effect of the Central Excise duty as the same is levied at each stage of manufacture. The CENVAT Credit is available only if the final product suffered the Excise duty.

If no Excise duty is payable in respect of the final product, the question of availing the CENVAT Credit does not arise as there is no duty of excise at more than one level. Similar views were expressed by this Tribunal in the case of Albert David Ltd. 2003 (151) ELT 443 (Tri.-Del.). The Tribunal has held therein as under : "A harmonious reading of Rules dealing with Cenvat Scheme and particularly Rule

57AC and Rule 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. We agree with the finding in the impugned Order that the decision in Premier tyres Ltd. And consequently decision in Ashok Iron and Steel Case, is not applicable as these decisions were passed on the ground that there was no provisions for reversal of credit. Now there is a specific provisions in Rule 57AD which clearly provides that "Cenvat Credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods." Rule 57AH contains the provision for the recovery of Cenvat credit utilized wrongly. As the inputs have been utilized in the manufacture of wholly exempted goods, credit taken in respect of such inputs is recoverable." The Tribunal in the case of Albert David Ltd. has distinguished the decision of the Larger Bench in the case of Ashok Iron & Steel Fabricators. The decision in the case of Albert Davit Ltd. has been affirmed by the Supreme Court as reported in 2003 (152) ELT A 81. Thus following the ratio of the Tribunal's decision in Albert Davit Ltd. case we hold that the Modvat Credit on the inputs lying in stock as well as contained in finished goods lying in stock as on 1.3.01. is not available to the Respondents. We also hold that as the issue involved in one of interpreting the Modvat Rules on penalty is imposable on the Respondents. The appeal is disposed of in the above terms.

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