

Commissioner of Central Excise Vs. Sumkit Marbles P. Ltd. and ors.

Commissioner of Central Excise Vs. Sumkit Marbles P. Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/34862

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-06-2004

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Sumkit Marbles P. Ltd. and ors.

Judgement :

1. The above captioned appeals have been filed by the Revenue against the common order-in-appeal passed by the Commissioner (Appeals), vide which he has affirmed the orders-in-original dropping the proceedings against the respondents for recovery of 8% of the value of the exempted goods cleared by the under Rule 57AD.2. I have heard both the sides. The learned SDR has contended that modvat credit could not be legally availed by the respondents on the inputs utilised by them in the manufacture of the exempted goods and as such they are liable to pay 8% of the value of the exempted goods cleared by them during the disputed period in terms of Rule 57CC and 57AD. On the other hand, the learned CA has reiterated the correctness of the impugned order.

3. The perusal of the record shows that the respondent were engaged in the manufacture of dutiable as well as exempted goods at the relevant time (August 2000 to June 2001). They availed modvat credit on the inputs utilised by them in the manufacture of both these products.

However, when they were served with the show cause notice for recovery of 8% of the value of the exempted goods cleared by them during that period, in terms of Rule 57AD and 57CC, they reversed the modvat credit. The adjudicating authority even ordered appropriation of that amount while dropping the recovery proceedings of 8% of the value of the exempted goods cleared by the respondents, through the orders-in-original. The appropriation of the modvat credit has been made by them by following the Board's Circular No. 591/28/01-CX dated 16.10.2001. The contention of the learned SDR that since the Circular is under review by the Board and as such could not be followed by the authorities below, cannot be accepted for the simple reason that so far this Board's Circular had not been reviewed or withdrawn and as such is very much in force and binding on the Department. Even otherwise, the law is well settled as laid down in *Allen Reinforced Plastics P. Ltd. vs. CCE, Hyderabad*, *Licon Eskey Enterprises (I) P.Ltd. vs. CCE, Kolkata*, *VAM Organic Chemicals Ltd. vs.*

CCE, Noida, *Jayant Oil Produces Ltd. vs. CCE, Mumbai 2003 (57) RLT 836* that when modvat credit on the inputs utilised in the manufacture of the exempted goods had been reversed by tan assessee, the provisions of Rule 57CC for recovery of 8% of the value of the exempted goods cleared by the assessee would not be attracted.

Therefore, the impugned order passed by the Commissioner (Appeals) cannot be said to be in any manner defective or bad in law. His order is perfectly value being in accordance with law and the same is upheld. The appeals of Revenue are ordered to be dismissed.

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