Vikrant Tyres Ltd and ors. Vs. Cce and ors.

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SooperKanoon Citation : sooperkanoon.com/35111

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-28-2004

Reported in : (2004)(96)ECC271

Judge : S Peeran, M T K.C.

Appellant : Vikrant Tyres Ltd and ors.

Respondent : Cce and ors.

Judgement :

1. All these appeals filed by the Parties' and by the Revenue raises a common question of fact in law and hence they are all taken up together for disposal, as per law.

2. The issue pertains to eligibility of modvat credit in respect of High Speed Diesel (HSD) Oil for the period 16.03.1995 to 12.05.2000. It is the submission of the learned SDR that the Finance Act, 2000 introduced Clause (1) to section 112 by which the modvat credit in respect of HSD oil was retrospectively denied. He submits that this issue was taken up by the Larger bench of the Tribunal comprising of Hon'ble President in the case of Chemo Pulp Tissues Vs. CCE, Meerut - 2000 (119) ELT 715(Tribunal-LB). After due consideration, they have noted that this provision had come into force w.e.f. 12.05.2000 and it is to have retrospective effect, and therefore, in view of the legislative intention to enforce the law retrospectively, the benefit of modvat credit on HSD oil has been denied. He submits that the learned Counsel's submission that the Apex Court, in the case of

CCE, Hyderabad Vs. Associated Cement Companies Ltd. - 2003 (151) ELT 12(SC).

decided the issue pertained in CEGAT Order No. 2313/99 SZB dated 08.09.1999 and only upheld the Tribunal's ruling with regard to the eligibility of modvat credit in respect of HSD oil used as fuel for generation of electricity which was in turn used for manufacture of cement. It is the contention of the learned SDR that the Apex Court was not concerned with the matter with regard to the retrospective applicability of the amendment brought by Finance Act, 2000, Therefore, this judgment cited by learned Advocates is not applicable.

3. Learned advocate Shri M.S. Srinivasa submitted that the Tribunal's judgment, referred to by the Supreme Court, is required to be considered and applied even though the situation existing is after the amendment brought by the Finance Act, 2000. He submits that once the Apex Court judgment has been settled on this issue. That has a binding effect, irrespective of the Larger bench judgment and the Finance Act, amending the provision retrospectively.

4. We have heard Shri M.G. Varadarajan, Advocate; Shri Riyazuddin, Senior Manager appearing for Vikrant Tyres Ltd.; and Shri C.Raghavendra, Chartered Accountant.

5. The advocates, representatives and the Chartered Accountants have adopted the arguments raised by Shri Srinivasa for applicability of the Apex court judgment rendered in the case of CCE Vs. Associated cement Company (supra).

6. On a careful consideration, we notice that the Apex Court, in the case of CCE Vs. Associated Cement Company (supra), dealt with the order passed by the Tribunal in Final Order No. 2313/99 SZB dated 08.09.1999 with regard to the provisions of law as in force on the day of the CEGAT's judgment. It is nowhere laid down by the apex Court that the amended provision brought about by Finance Act, 2000 has no applicability nor has the Apex Court struck down the provision as unconstitutional. The judgment delivered by the Apex Court pertains to the provision of law, as it existed on the day when the Tribunal delivered the judgment. The Apex Court has merely upheld the Tribunal's ruling. Finance Act, 2000,

amended the law retrospectively and the eligibility of modvat credit on HSD oil was denied. This issue was taken up by the Larger Bench of the Tribunal in the case of Chemo Pulp Tissues (supra) and the Tribunal, after due consideration of the amended provision, has noted that in terms of Clause (1) of Section 112 of Finance Act, 2000, the benefit of credit for the period 16.03.1995 to 12.05.2000 is not admissible. In view of this larger bench's judgment, we are required to follow the same, which applies, to the facts of this case on all fours. Therefore, the parties' appeals, as noted in the Cause List are all rejected and the Revenue's appeals, as noted in the Cause List are all allowed.