

J.C.T. Electronics Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-2004

Reported in : (2004)(96)ECC246

Judge : S Kang, a T V.K.

Appellant : J.C.T. Electronics Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal, filed by M/s. J.C.T. Electronics Ltd., is whether they are eligible to take back the Modvat credit in their books of account after the matter has been remanded by the Commissioner (Appeals) to the Adjudicating Authority for re-adjudication.

2. Shri R. Santhanam, learned Advocate, submitted that the Appellants, manufacturer of colour picture tubes, avail of Modvat Credit of the duty paid on the inputs and capital goods used in or in relation to the manufacture of the colour picture tubes (CPTs); that a show cause notice dated 3.7.1997 was issued to them for denial of Modvat Credit on capital goods for the period from December 1996 to February 1997; that the Assistant Commissioner under Order-in-Original No. 214/98 dated 18.5.98 disallowed the Modvat Credit amounting to Rs. 1,52,68,140 which was reversed by them under protest on 20.5.98; that the Commissioner (Appeals) vide Order-in-Appeal No. 123/99 dated 1.4.99 allowed Credit of Rs. 1,40,53,140 to them and remanded the matter to the Assistant Commissioner for

de novo adjudication in respect of the balance Rs. 12,15,100; that the Appellants informed the Assistant Commissioner to take up the de novo Adjudication under their letter dated 24.5.99; that thereafter on 14.6.99 they took the Credit of Rs. 1,40,53,140 in their RG 23-C Part II being the amount allowed by the Commissioner (Appeals) under intimation to the Assistant Commissioner under their letter dated 14.6.99; that the Deputy Commissioner, under Order-in-original No.34/2000 dated 28.8.2000, ordered that the amount of Credit so taken pursuant to the Order-in-Appeal dated 1.4.99, be recovered from them and imposed a penalty of Rs. 25 lakhs on the ground that an appeal had been filed by the Department against the said Order-in-Appeal and the de novo adjudication had been kept pending and that there is a set procedure for claiming the refund of the Credit allowed and that the entire Order-in-original dated 18.5.98 was remanded for de novo adjudication; that on appeal filed by them, the Commissioner (Appeals), under the impugned Order, upheld the Order-in-original while setting aside the penalty holding that Order-in-original dated 18.5.98 was set aside and the case was remanded for de novo adjudication and the appellant ought to have deferred from taking re-credit till the order of the Adjudicating Authority.

3. The learned Advocate, further, submitted that a demand which has been set aside and quashed by the Commissioner (Appeals) and the adjudication order being remanded for de novo adjudication, either wholly or partly, the demand raised earlier has been wiped out and for a non-existing demand, there can be no action for collection or recovery; that when once the amount of Modvat Credit was debited by them pursuant to the Adjudication order dated 18.5.98 and the said Order being set aside in appeal, they had become entitled to take re-credit thereof. He relied upon the decision in the case of *Bharat Foam Udyog Ltd. v. CCE, 2001 (44) RLT 613 (CEGAT)* wherein it has been held by the Tribunal that "where the deposit was made by making endorsement in the PLA, the assessee himself could have taken credit of the amount by making necessary endorsement in his own PLA account" once the order was set aside by the Tribunal. Reliance has also been placed on the decision in the case of *Ambica Hydraulics (P) Ltd. v. CCE, Ahmedabad-II, 2003 (58) RLT 769 (CEGAT)* wherein it has been held that "Credit of the pre-deposit amount after the passing of the Order in favour of the assessee by the appellate authority in their PLA can be taken without filing the refund

application. He also referred to the following decisions: (i) Voltas Ltd. v. UOI, 1999 (65) ECC 879 (Del) : 1999 (112) ELT 34 (Del) ITC Bhadrachalam Paper Boards Ltd. v. CCE, Hyderabad, 2000 (39) RLT 710 (CEGAT) 4. Countering the arguments, Ms. Charul Baranwal, learned SDR, submitted that the Order-in-Appeal dated 1.4.99 has not decided the matter finally; that the Order-in-Original dated 18.5.98 was set aside and the matter was remanded for de novo adjudication directing the Adjudicating Authority to re-examine each item with reference to their use with relevant judgments of Appellate forums and to take appropriate decision as regards admissibility of the Modvat Credit to the Appellants; that thus the eligibility of the Appellants to the Credit was to be adjudged by the Adjudicating Authority and only thereafter the eligibility of the Appellants to take the Modvat Credit would have been decided; that till that time they were not eligible to take the Modvat Credit.

5. We have considered the submissions of both the sides. Modvat Credit of the duty paid on capital goods was governed by Rules 57Q to Rule 57U of the Central Excise Rules, 1944 during the relevant period. The Modvat Credit of the duty paid on capital goods was available to a manufacturer on receipt of the capital goods subject to the procedure prescribed in Rule 57T of the Central Excise Rules, 1944. One of the main condition for availing the Modvat Credit was that every manufacturer intending to take Credit of the duty paid on capital goods shall, before the receipt of the capital goods, file a declaration with the Assistant Commissioner indicating therein the particulars of the capital goods description of the final product manufactured in his factory and any other further information as the Assistant Commissioner may require. The Appellants herein had taken Modvat Credit of the duty paid on capital goods. As the Revenue was of the view that some of the goods in respect of which Credit of the duty paid had been taken by the Appellants were not capital goods as defined under Rule 57Q show cause notice was issued for disallowing the Modvat Credit. The Assistant Commissioner under Order-in-original dated 18.5.98 had disallowed the Modvat Credit. On appeal filed by them the Commissioner (Appeals) under Order-in-Appeal dated 1.4.99 examined a number of goods and came to the conclusion of that those goods were capital goods under Rule 57Q of the Central Excise Rules. In respect of 7 goods such as PCB Pressure Switch, Engine & Lathe Machine, etc. the

Commissioner (Appeals) felt that the Adjudicating Authority should re-examine each of items with reference to their use and the relevant judgment of Tribunal or High Court and take appropriate decision. He has, therefore, set aside the Adjudication order dated 18.5.98 and remanded the case to the Adjudicating Authority to decide afresh keeping in mind the observations made in the Order-in-Appeal. The appellants who had deposited the entire amount of Modvat Credit which was disallowed to them, informed the Assistant Commissioner immediately on receipt of the Order-in-Appeal that the Commissioner (Appeals) has allowed them Modvat Credit amounting to Rs. 1,40,53,140 and remanded the matters back in respect of capital goods involving Modvat Credit Rs. 12,14,999 and requested the Adjudicating Authority to decide the matter at the earliest. Subsequently under intimation to the Department the Appellants had taken the Credit back in their RG23-C register to the extent the Credit had been allowed to them by the Commissioner. The Revenue has disallowed the said amount on the ground that the appellants should have filed a refund claim and should have waited till the Adjudication Order in remand proceedings is passed as the Commissioner (Appeals) had remanded the matter entirely to be re-adjudicated in respect of all capital goods and not only in respect of some capital goods involved in the matter. The learned Advocate has contended that once the Adjudicating Order dated 18.5.98 has been set aside, no order exists disallowing them the Modvat Credit and the original position has to be restored i.e. they are eligible to take the Credit back in their books of accounts. He has relied upon a number of decisions in support of this contention.

We find substantial force in the contention made by the learned Advocate. As observed by us earlier Modvat Rules provide for taking the Modvat Credit as soon as the capital goods are received in the factory accompanied with the duty paying 'documents. Once there is no Adjudication Order, disallowing the Modvat Credit as the same has been set aside and the matter has been remanded, the Appellants have the right to take back the Credit in their books of account. This was the view expressed by the Tribunal in the case of Baharat Foam Udyog Ltd. (supra). In the said decision the appellants therein had deposited the amount as per the Stay Order passed by the Appellate Tribunal.

Subsequently the Tribunal had set aside the Order and allowed the appeal with the consequently relief. The appellants prayed for return of the deposit made pursuant to the Stay Order which was not returned to them. When the appellants approached the Revenue for return of the money deposited by them show cause notice was issued to them for rejection of the refund. The Tribunal has held that "the amount deposited pursuant to the Order passed by this Tribunal under Section 35F of the Act should have been returned after the Final Order dated 15.2.99 by the Department without demur. In the instant case where the deposit was made by making endorsement in the PLA the assessee himself could have taken Credit of the amount by making the necessary endorsement in his own PLA account. The assessee is directed to take Credit of the said amount in his PLA with notice to the concerned jurisdictional authority. The Officer is directed not to pursue the show cause notice issued proposing to reject claim for return of the money." The Tribunal has thus held that the assessee is eligible to take the Credit of the amount by making necessary endorsement in his PLA account. In the present matter also the appellants had debited the Modvat Credit disallowed to them and once the order disallowing the Modvat Credit has been set aside they are eligible to take the Credit back. As and when the matter is re-adjudicated by the competent authority the appellants will be liable to either reverse the Modvat Credit disallowed to them or pay the same in cash, if there is no Credit available in their balance. We also observe that nothing has been brought on record that even after lapse of almost 5 years since the time the matter was remanded back by the Commissioner (Appeals) the same has been re-adjudicated. In view of this we allow the appeal filed by the appellants. We, however, make it clear that in case the Department's appeal filed against the Order-in-Appeal dated 1.4.99 is allowed by the Tribunal and/or in de novo adjudication Modvat Credit is disallowed to the appellants they would be liable to either reverse the Modvat Credit so disallowed or pay the same in cash.

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