Commissioner of Central Excise Vs. Colgate Palmolive (i) Ltd. and

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SooperKanoon Citation : sooperkanoon.com/35552

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-08-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Colgate Palmolive (i) Ltd. and

Judgement :
1. Heard both sides. The Revenue is in appeal. The issue involved in the appeal is that reversal of MODVAT credit availed and demand of duty on the clearance of empty containers.

2. M/s. Colgate Palmolive (India) Ltd., Mumbai-400015, (respondent herein), cleared empty fiber drums, plastic bags, glass bottles and aluminium bottles without following proper procedure and in contravention of the provisions of Rule 173B, 173C, 52A and 53 of the Central Excise Rules, 1944, and without payment of Central Excise duty from their manufacturing premises and they had availed MODVAT credit on the above mentioned materials as being inputs and accordingly Show Cause notice was issued (for the period February 1998 to June 1998).

The Assistant Commissioner of Centrah Excise, Div F-ll, has confirmed the demand made in Show Cause notice vide Order-in-Original No. 51/99 dated 9.2.99. The respondent herein was successful in appeal before the Commissioner (Appeals) by Order-in-Appeal dated 30.7.99. The said order is impugned before the Tribunal by the Revenue.

3. We have gone through the records. The respondents have also filed cross objection supporting the order passed by the Commissioner (Appeals). The Commissioner (Appeals) following the circular issued by the Board of Central Excise and latest decision of the apex Court reported in 2003 (155) ELT 11 SC (C.C. Ex v. West Coast Industrial Gases Ltd.) 4. The matter in issue is squarely covered by the aforesaid decision wherein it is observed that "The drums/barrels in which calcium carbide is received by manufacturers could not be treated to be a waste arising out of processing of inputs for which credit has been taken. No duty is leviable on such drums/barrel and containers cleared from the factory.

There is no specific rule levying duty on such drums, and barrels/and containers". Therefore, the MODVAT credit on waste packages/containers used for packaging modvatable inputs on which credit of duty has been taken is permissible.

5. There are no merits in the Revenue's appeal. Accordingly, the same is dismissed. Cross objection filed by the respondent is allowed.