

Commissioner of Central Excise Vs. Poona Bottling Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-29-2004

Reported in : (2005)(100)ECC501

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Poona Bottling Co. Ltd.

Judgement :

1. The instant appeal from the Revenue is directed against the order-Appeal passed by the Commissioner (Appeals) whereunder the order of the Additional Commissioner seeking recovery of Rs. 9,84,627/- from the respondents was set aside.

2. Briefly stated, the respondents, who are the manufacturers of aerated water, challenged the Notification No.203/87-CE dated 09/09/19987, whereby modvat benefit under Central Excise Rules 1944 was withdrawn in respect of aerated water industry.

3. The respondents filed a writ petition, which was dismissed.

Subsequent to such dismissal, the respondents were issued direction by the Additional Commissioner on 06/04/98 to make the payment of in admissible credit. The Commissioner (Appeals) set aside the said direction, for recovery, holding that, the demand for credit reversal is time barred. The Revenue appeal

challenges the said order.

5. The challenge to the order of the Commissioner (Appeals) is on the ground that the Commissioner (Appeals) holds that the credit is permissible only if the inputs are used in the manufacture of final products and the credit cannot be permitted after the withdrawal of Notification No.203/87-CE dated 09/09/1987. It is also pleaded that the writ petition of the respondents was rejected vide final order dated 27/02/1996. Hence it is claimed that, in terms of the judgment of the Hon'ble High Court of Allahabad in the case of Super Cassettes Industries Limited reported in 1997(94) -E.L.T.302 modvat credit taken in respect of inputs, which are in stock has to be reversed, if the product is fully exempted from excise duty from a particular date.

Applying corollary when the notification is issued, Withdrawing the modvat facility, the credit taken on the input in stock has to be reversed.

6. I have carefully considered the submissions in the appeal, the respondents have placed reliance on the judgement of Hon'ble High Court of Kerala reported in 2001 (130) E.L.T.417 (Ker.) in the case of Collector of Central Excise & Customs, Cochin v. Premier Tyres Limited, which holds that, modvat credit taken for eligible final product which was dutiable from the date of receipt of inputs but came to be exempted later, not reversible. There is no provision in the rules, to provide for reversal of credit except where it has been illegally or irregularly taken. The position has also been confirmed in the order of the Larger Bench of the Tribunal in the case of Commissioner of Central Excise, Rajkot v.Ashok Iron & Steel Fabricators reported in 2002 (140) E.L.T277 (Tri. - LB).

7. Besides, I find that, the Commissioner (Appeals) has also correctly observed that, no demand seeking recovery of in admissible credit was issued within the limitation prescribed under the rules.

In view of the discussion above, I hold that, the order passed by the Commissioner (Appeals) is proper and legal and calls for no interference.

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