

Jindal Polyester Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-20-2004

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Jindal Polyester Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Modvat credit of Rs.33,41,519/- has been disallowed and penalty of Rs.16,20,000/- imposed by the authorities below. Out of the total demand, Rs.31,27,674/- has been disallowed on the ground that a) Bills of Entry on which credit was availed were not the name of the appellants, but in the name of their office situated at New Delhi.

b) the appellants received part consignment out of the quantity mentioned in the B/E and (c) the triplicate copy of the bill of entry not produced for verification.

Rs.1,67,554 represents modvat credit disallowed on the ground that it was availed on the final product while credit was admissible only on inputs. Rs.46,291/- represents modvat credit disallowed on a bill of entry which did not contain customs declaration on its reverse which was the mandatory requirement as confirmation of payment of CVD.2. We have heard both sides. In the light of the Tribunal's order in the case of Larsen & Toubre Ltd. vs. CCE, Bhubaneswar 1994 (72) ELT 948 and Bhore Industries Ltd. vs. CCE, Pune 2000 (122) ELT 790 (following STS Chemicals Ltd. judgment - 1999 (111) ELT 870), we hold that credit

cannot be denied on the ground that the bill of entry was not in the appellants' name but in the name of their office situated at New Delhi. The second ground for denial of credit of Rs.31,27,674 is also no longer available to the Revenue in the light of the Tribunal's judgment in the case of STS Chemicals Ltd. cited supra. The third ground for denial is also not available to the department as we find from the Adjudication Order that the appellants produced the triplicate Bill of entry for verification and further the document has been produced before us for verification. We, therefore, set aside the denial of credit of Rs.31,27,674/-.

3. Credit of Rs.1,67,554/- is also admissible for the reason that the explanation of the appellants that defective final products viz polyester films were returned to them and recycled the defective films into granules to use them once again in the manufacture of final products, has not been controverted by the Revenue and in the light of the Tribunal's order in the case of Hindalco Industries Ltd. vs. CCE, Allahabad CCE, Meerut vs. Tin Manufacturing Company (2000(119) E.L.T. 290), both of which are the decisions of the Larger Bench.

4. Credit of Rs. 46,291/- is also admissible to the appellants in the light of the Tribunal's decision in the case of Larsen & Toubre Ltd. cited supra, wherein it has been held that endorsement on the Bill of Entry is not required in the case of documents in favour of user factory.

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