

Cce Vs. Vidyut Metallic Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-28-2004

Reported in : (2005)(119)LC86Tri(Mum.)bai

Judge : A M Moheb

Appellant : Cce

Respondent : Vidyut Metallic Ltd.

Judgement :

1. The Revenue's appeal was originally heard on 12.4.2004. The decision of the Bench consisting of a Single Member was pronounced on the same day rejecting the appeal of the Revenue. However no written order was issued.
2. The Jt. CDR in his letter dated 27.4.2004 addressed to the Assistant Registrar, requested him to have the letter put up to the Member for re-listing the matter as the order pronounced did not take into consideration settled legal positions. The Member re-listed the appeal.
3. The Ld. Advocate appearing for the Respondent argued that since the decision of the Bench was already announced, the letter of the Jt. CDR be treated as if it is a ROM and dealt with accordingly. With the consent of both parties the letter dated 27.4.2004 was converted into an ROM and after admitting it, the appeal is taken up for disposal.

5. Revenue's contention is that the Commissioner (Appeals) erred in allowing Modvat credit availed on HSD, which is captively consumed for the generation of electricity, which is subsequently used for the manufactured of dutiable final product. The Commissioner (Appeals) followed the decision fo the Tribunal in the case of India Cements Ltd. v. CCE, Hyderabad 1997 (95) ELT 520 (T) : 1998 (74) ECR 82 (T), wherein the Tribunal held that Modvat credit is allowable as HSD for generation of electricity as per Notification No. 11/95 dated 16.3.1995.

6. The Revenue argues that the decision contained in Associates Cement cited supra is no longer good law in view of Section 112 of the Finance Act, 2000. Section 112 provides as under: 112. Validation of the denial of credit of duty paid on high speed diesel oil. (1) Notwithstanding anything contained in any rule of the Central Excise Rules, 1944, no credit of any duty paid on high speed diesel oil at any time during the period commencing on and from the 16th day of March, 1995 and ending with the day, the Finance Act, 2000 receives the assent of the President, shall be deemed to be admissible.

(2) Any, action taken or anything done or purported to have been taken or done at any time during the said period under the Central Excise Act or any rules made thereunder to deny the credit of any duty in respect of high speed diesel oil, and also to disallow such credit to be utilized for payment of any kind of duty on any excisable goods shall be deemed to be, and to always have been, for all purposes, as validly and effectively taken on done, as if the provisions of Sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order any court, tribunal or other authority.

(a) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for allowing the credit of the duty paid on high speed diesel oil and no enforcement shall be made by any court, tribunal or other authority of any decree or order allowing such credit of duty as if the provisions of Sub-section (1) had been in force at all material times.

(b) recovery shall be made of all the credit of duty, which have been taken orutilized by which would not have been allowed to be taken or utilized, if the provisions of Sub-section (1) had been in force at all material times, within a period

of thirty days from the date on which the Finance Act, 2000 receives the assent of the President and in the event of nonpayment of such credit of duty recoverable, interest at the rate of twenty-four per cent per annum shall be payable, from the date immediately after the expiry of the said period of thirty days till the date of payment.

Explanation--For the removal of doubts, it is hereby declared that no act of omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

7. It was urged that the Apex Court in the case of *JTW Signode v. CCE* vide para 11 held that in view of the retrospective amendment to Section 11A in the Finance Act, 2000 the Judgment given by the Supreme Court in the *Cotspun* case would no longer be good law.

Applying the ratio of this Judgment the decision in *Associated Cement* is no longer good law, it is argued.

8. The Ld. Advocate for respondent fairly conceded that the ratio of the Supreme Court's decision in *ITW Signod* applies. However, he submitted that no penalty can be imposed on the respondents in view of the decision contained in *Chemo Pulp Tissues v. CCB, Meerut*, wherein the Tribunal held that order imposing 10. In view of the settled legal position on this issue, the Revenue's appeal is allowed setting aside the order of the Commissioner (Appeals). The order of the lower adjudicating authority is restored to the extent of denial of Modvat Credit on HSD. In other words, penalties imposed by the Assistant Commissioner are set aside. The appeal is, thus partly allowed.

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