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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-25-2005

Reported in : (2005)(184)ELT61Tri(Chennai)

Judge : A T V.K., P Chacko

Appellant : Laksmi Machine Works

Respondent : Cce

Judgement :

1. In these five appeals - 3 filed by M/s. Lakshmi Machine Works and 2 filed by Revenue - common issues involved are whether M/s. Lakshmi Machine Works are eligible to clear the inputs, in respect of which Modvat credit has been availed of, without payment of duty against a CT3 Certificate issued by a 100% Export Oriented Unit and whether the duty, if payable, is required to be equivalent to the amount of Modvat credit initially availed of.

2. We heard Shri S. Jayakumar, ld. Advocate for the assessee and Smt.

R.Bhaghya Devi, ld. SDR for the Revenue. Ld. Advocate submitted that the assessee manufactured textile machinery and parts thereof; that they also availed Modvat credit of the duty paid on parts purchased from the market; that they are supplying these machineries to 100% EOU; that whenever these 100% EOU needs any spare parts the same is also supplied by them against CT3 Certificate out of the inputs purchased by them from the market. Ld. Advocate, further,

submitted that as per Explanation to Rule 57AB of the Central Excise Rules, 1944 when inputs are removed as such, the assessee shall be the deemed manufacturer and once the removal of inputs as such is considered as deemed manufacture, they are eligible to remove the same without payment of duty against CT3 Certificate issued by the 100% dated 4.1.1995. In support of his contention he referred to the Board's Circular No. 283/117/96-CX dated 31.12.1996 where it has been clarified that the Modvat credit in RG23A Part - II account against the export of inputs as such under bond can be utilised in the same manner as it is provided for a final product under proviso to Rule 57F (4). Obviously it follows from this that such inputs should be allowed to be exported under bond without any reversal of the credit. Ld. Advocate contended that the inputs are removed by them to the 100% EOUs also under bond and as such the clarification contained in Circular dated 31.12.1996 is applicable to such clearances also. Finally ld. Advocate submitted that even if it is held by the Tribunal that the assessee was not eligible to remove the inputs without payment of duty to the 100% EOUs, they are liable to pay duty equivalent to the amount of Modvat credit availed by them; that as they are not manufacturer of the inputs, they cannot be asked to discharge the duty liability on the price at which the goods are sold by them. In support of his contention he relied upon the decision of the Larger Bench of the Tribunal in the case of CCE, Vadodara v. Asia Brown Boveri Ltd. - 2000 (120) ELT 228 (Tri. - LB) and contended that the said decision has laid down the policy that on clearance of the inputs duty more than the credit availed of cannot be asked to be paid by an assessee. Reliance has also been placed on the decision in the case of Eicher Tractors/Eicher Motors Ltd. v. CCE, Jaipur/Indore -[2004 - TIOL - 478 - CESTAT-DEL] wherein the Tribunal even under CENVAT Credit Rules 2001 has held that "What an assessee is required to do when he removes inputs as such can only be to restore the credit, that he had taken".

He, therefore, contended that whether under Rule 57AB of the Central Excise Rules, 1944 or under Rule 3(4) of CENVAT Credit Rules, 2001, the assessee is only required to reverse the amount of credit taken by him, at the time of clearance of inputs as such. He also submitted that no penalty is imposable on the assessee was different views have been held at different times and the Commissioner (Appeals) has allowed their appeal holding that when the inputs are cleared as

such the assessee has to be treated as manufacturer of the inputs and therefore they are eligible to remove the inputs against CT3 Certificate.

3. Countering the arguments, ld. SDR submitted that the phrase "as if manufactured" used in Rule 57AB has been used so as to enable the department to collect the Central Excise duty involved on inputs which are cleared as such. The Rule no where provides that the inputs can be cleared without payment of duty to a 100% EOU against a CT3 Certificate; that the Board's Circular dated 31.12.1996, relied upon by the ld. Advocate, is not applicable as the said Circular deals with the utilisation of Modvat credit in respect of inputs which are exported as such under bond; that the clearance of inputs to 100% EOU is not equivalent to export which is the subject matter of the said Circular.

She relied upon the decision in the case of Siddhartha Tubes Ltd. v.CCE, Indore - [2002 (148) ELT 796 (Tri. - Del) wherein it has been held that the Notification No. 1/95-CE specifically stipulates that the inputs, etc. required by 100% EOU for manufacture of export goods should be received directly from the manufacturers and therefore the inputs cannot be cleared without payment of duty on the basis of CT3 Certificate. She also submitted that the Larger Bench decision in Asia Brown Boveri Ltd. will not be applicable after the introduction of CENVAT Credit Rules 2001 wherein the provisions have undergone a complete change; that sub-rule (4) of Rule 3 of the CENVAT Credit Rules provides that where inputs on which CENVAT Credit has been taken are removed as such, the manufacturer shall pay the amount equivalent to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods at the rate applicable to such goods on the date of removal and on the value determined under Section 4 or Section 4A of the Central Excise Act 1944 and such removal shall be made under the cover of invoice referred to under Rule 7. She contended that this provision is entirely different from the provision of Rule 57F which was interpretted by the Larger Bench of the Tribunal in the case of Asia Brown Boveri Ltd.; that therefore the appellants are liable to pay the duty which has to be worked out as per the provisions of sub-rule (4) of Rule 3 of the CENVAT Credit Rules, 2001.

4. We have considered the submissions of both the sides. The assessee is getting the inputs for manufacture of machineries, their final product, and avail of CENVAT Credit of the duty paid on such inputs.

They are not the manufacturer of the inputs at all. The Notification No. 1/95-CE dated 4.1.1995 contains the conditions on fulfilment of which the 100% EOU can procure the goods without payment of duty. One of such condition is that the 100% EOU brings the excisable goods directly from the factory of manufacture. As in the present matters the 100% EOUs have not purchased the excisable goods directly from the factory of manufacture and only from the assessee who has obtained them from the factory of manufacture and has availed of Modvat credit, the condition specified in the Notification has not been complied with and accordingly the benefit of Notification No. 1/95 - CE is not available to the impugned goods cleared by the assessee. Accordingly they are liable to pay the duty. This was also the decision of the Tribunal in the case of Siddhartha Tubes Ltd. v. CCE, Indore - 2002 (148) ELT 96 (T).

5. The other issue involved in these appeals is whether the duty payable by the assessee will be equivalent to the amount of CENVAT Credit initially taken by them. The Larger Bench of the Tribunal in the case of Asia Brown Boveri Ltd. has held that "the requirement of Rule57F (1)(ii) is for payment of duty on the inputs received for home consumption where the inputs have not been used by the manufacturer.

The legal fiction of treating the inputs as having been manufactured by the recipients of the inputs was only to see that the manufacturer restores the original position by debiting the same rate of duty at which he had taken the credit. The proviso to Rule 57F(1) clearly explains the rationale for creating the legal fiction by providing that duty of excise payable at the time of removal for home consumption shall not be less than the amount of credit that has been allowed in respect of the inputs under Rule 57A". We agree with the ld. Advocate that the Larger Bench decision is applicable for the period before the amendment of Rule 57AB, that is upto 28.2.2001. Thereafter the provisions of Rule 57AB has undergone a change and also the provisions of sub-rule 4 of Rule 3 of CENVAT Credit Rules, 2001

contain a provision different from the provisions of Rule 57F(1) as interpretted by the Larger Bench of the Tribunal. Once when there is a change in the provisions of the Rule, the decision of the Larger Bench in Asia Brown Boveri Ltd. does not have precedent value on account of changes in the provisions. It has been held by the Supreme Court in the case of CCE v.Alnoori Tobacco Products, 2004 (170) ELT 135 (SC) that "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.... These observations must be read in the context in which they appear to have been stated ..... Judges interpret statutes, they do not interpret judgements. They interpret words of statute, their words are not to be interpreted as statutes". The Supreme Court has further observed that "circumstantial flexibility, one additional or different fact may make a word of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper". Now the provisions of sub-Rule (4) of Rule 3 of CENVAT Credit Rules clearly provides that when inputs or capital goods on which CENVAT Credit has been taken are removed as such from the factory, the manufacturer of the final product shall pay the amount equivalent to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under Section 4 or Section 4A of the Central Excise Act. In view of this specific provisions, the duty has to be paid according to the rate of duty applicable on the date of removal on the value determined under Section 4 or Section 4A of the Act. There is no force in the submission of the ld. Advocate that as the assessee is not the manufacturer no new rate of duty or value can be determined for the purpose of levying the duty. The reason is very clear because the assessee has been made eligible to bring the inputs and take the CENVAT Credit of the duty paid on the inputs subject to condition that the inputs are used in or in relation to the manufacture of the final product. If the assessee wants to remove the inputs as such, they have to comply with the condition specified in the Rules. If they are not willing to comply to the condition of the rule for removal of the goods as such they should use the inputs for the purpose these were brought into factory that is in the manufacture of their final product. The decision of the

Tribunal in the case of Eicher Tractors v. CCE, Jaipur relied upon by the ld. Advocate is not applicable in view of the decision of the Apex Court in the case of Alnoori. We agree with the ld. Advocate that as the issue involved in these appeals relates to interpretation of the provisions of CENVAT Credit Rules no penalty is imposable. We hold that no penalty is imposeable on the appellants in any of the appeals. The demand of duty against the assessee is upheld.All the appeals are disposed of in the above terms.

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