

Cce Vs. Innovative Tech Pack Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-04-2005

Judge : A T V.K., P Bajaj

Appellant : Cce

Respondent : innovative Tech Pack Ltd.

Judgement :

1. In this appeal, filed by the Revenue, the issue relates to the extent of Modvat Credit available to M/s. Innovative Tech Pack Ltd. in respect of goods procured from 100% E.O.U.2. Mrs. Charul Barnwal, learned SDR, submitted that the Commissioner (Appeals) has allowed the appeal filed by the respondents following the decision of the Larger Bench of the Tribunal in the case of Vikram Ispat v. CCE ; that the said decision of the Larger Bench is not applicable as during the relevant period, i.e. May 1999-October 1999, the provisions had been changed; that the Notification in consideration before the Larger Bench was 5/94-CE whereas in the present matter, the Notification in consideration is 21/99-CE (NT) dated 28.2.99; that, thus as per the law during the relevant period, the credit on inputs procured from 100% E.O.U. is allowable only to the extent of C.V. Duty actually paid on those inputs and since the respondents had availed of the credit in excess of C.V.Duty actually paid, they are not eligible for the same.

3. Opposing the appeal, Shri B.L. Narasimhan, learned Advocate, submitted that the Tribunal in the case of M/s. Ferro Alloys Corporation v. C.C.E., Nagpur 2005 TIOL 170 CESTAT-MUM has held that the decision of the Larger Bench of the

Tribunal in the case of Vikram Ispat is applicable even in respect of Notification No. 21/1999; that in Ferro Alloys Corporation (supra), the Tribunal has followed another decision in the case of Innovative Tech Pack Ltd. wherein the Tribunal has held that the relevant clause in Notification No. 21/99 is identical to clause in Notification No. 5/94-CE inasmuch as both the Notifications stipulated that credit of specified duty in respect of any input manufactured by a 100% E.O.U. shall be restricted to the extent which is equal to additional duty leviable on like goods under Section 3 of the Customs Tariff Act.

4. After considering the submissions of both the sides, we find that the appeal has been filed by the Revenue only on the ground that the provisions relating to Modvat Credit in respect of the goods manufactured by a 100% E.O.U., are different under Notification 21/99-CE (NT) from the provisions contained in Notification No. 5/94 which was considered by the Larger Bench of the Tribunal. This issue has already been settled by this Tribunal in the case of the respondents themselves as well as in the case of M/s. Ferro Alloys Corporation (supra), relied upon by the learned Advocate. Following the ratio of the said decisions, we do not find any merit in the appeal filed by the Revenue, which is rejected.

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