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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-29-2005

Reported in : (2005)(187)ELT282TriDel

Judge : P Bajaj

Appellant : Jindal Electricals

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal, which has been filed by the appellants the issue relates to the recovery of the Modvat credit amount of Rs. 26,693/- with penalty of Rs. 10,000/- from the appellants.

2. The learned Counsel has contended that the demand is time barred and that the Rule 57-CC stood repealed on 1-7-2001 much before the issuance of the show cause notice dated 21-1-2003. Therefore, the impugned order deserves to be set aside. In my view, the contention of the learned Counsel, is wholly misconceived. From the record, it is evident that during the relevant time, the appellants were manufacturing and clearing Automatic Voltage Controllers. They availed the Modvat credit on the inputs used in the manufacture of these goods. They, however, cleared these goods at NIL rate of duty under Notification No.10/97-C.E., dated 1-3-1997 to M/s. National Physical Laboratory, New Delhi, but did not reverse the credit availed by them on the inputs.

The contention of the learned Counsel that there was no suppression of facts by the appellants as they had been showing the clearance of the goods in their RT-12 returns at the time when they cleared these goods on 2-2-1998 and 15-3-1999 and as such the extended period could not be invoked, is wholly mis-conceived. In those RT-12 returns, it was never disclosed that the appellants had reversed the Modvat credit on the material/inputs used in those goods or that they were not reversing the same. It is not a case where the duty demand has been raised on the clearances made by the appellants on the above said dates and that the Department had full knowledge about those clearances. It is a case where the recovery of Modvat credit has been ordered against the appellants. For having availed the credit on the inputs used in the non-dutiable goods and which fact had been kept concealed or suppressed by the appellants from the Department, the extended period of limitation has been rightly invoked.

3. Another contention of the learned counsel that Rule 57-CC which required the payment of 8% of the value of the clearances of the goods manufactured out of the inputs on which the appellants had availed the Modvat credit, stood repealed on 1-7-2001 and as such no demand could be raised from the appellants is also devoid of law. No doubt, Rule 10-A was substituted in place of Rule 57-CC but to any liability incurred under the erstwhile Rule stands protected by the provisions of Section 38-A of the Act and the same could be enforced against the appellants. The amount in question has been rightly demanded from them.

4. Lastly, the learned Counsel has contended that the penalty has been wrongly imposed as there was no intention to evade the duty. But this contention of the learned Counsel cannot be accepted for the simple reason that there intention regarding the wrongful availment of the credit on the inputs used by the appellants in the manufacture of exempted goods can be safely inferred. It is difficult to accept that they did not know the law in this regard. Therefore, the penalty had been rightly confirmed against the appellants. The ratio of the law laid down by the Apex Court in the case of P & H Pharmaceuticals (P) Ltd. v. CCE, - 2003 (153) E.L.T. 14 (S.C.), regarding the limitation and suppression of facts as well as the observations of the Apex Court in the case of CCE v. Hindustan Wire Products Ltd., regarding the applicability of the new Rule at the time of issuance of the show

cause notice as reported in 1990 (48) E.L.T. A62, referred to by the learned Counsel, in the light of the facts and circumstances, discussed above, is not attracted to the case in hand. Similarly, the observations of the Apex Court in the case of CCE v. SRF Ltd. 2004 (172) E.L.T. A134, that the clearances under Chapter X of the Central Excise Rules or under the bond are not the same thing as clearance of the goods wholly exempt or goods chargeable to NIL rate of duty are not applicable to the case of the appellants as in their case, the goods were exempt from duty under the Notification, referred to above.

5. In view of the discussion made above, I do not find any illegality in the impugned order and the same is upheld. The appeal of the appellants is dismissed.

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