

Commissioner of Central Excise Vs. Leak Proof Engg (i) Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-07-2005

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Leak Proof Engg (i) Pvt. Ltd.

Judgement :

1. Assessee had availed benefit Revenue Expenditure under Section 35 of Income Tax Act 1962 in Capital Goods. Revenue is in appeal against that the Order of CCE Appeals who modified the order of the Jt. Commissioner to the extent that the assessee were entitled to Modvat Credit on Capital Goods up 23/7/98 and restored the same, if paid back & held that penalty was not imposable since there was no suppression of facts holding.

I have given my careful consideration to the contentions of rival slides and find that for the period from 1/4/94 to 22/7/98 there was no bar on the appellants on availing Modvat credit on capital goods if revenue expenditure was claimed by the manufacturer on that portion of the value of such capital goods which represented excise duty. This contention of theirs is beyond any doubt as the Sub-rule 5 of Rule 57R(5) was amended in terms of Notfn No. 14/96-CE(NT) dtd.

23/7/96 so as to include the aforesaid revenue expenditure barring modvat claim on the depreciation claim. I also find that the respondents herein had been filling declaration from time to time and declaring therein that they would not be claiming depreciation under Section 32 while filling the Income Tax Return. I also find that their assertion in regard to the balance sheet copy for the relevant period having been given to the Audit party while audit was being conducted is also substantially correct. They therefore cannot be fastened with the penalty as leave alone establishing mens-rea on their part. It has not even been alleged that they willingly suppressed any fact and had intended to claim any benefit fraudulently. To this extent I find that the findings given by the Joint Commissioner in the impugned order are not correct. Having regard to that as also the legal position as brought out herein before, I order as follows: They are entitled to avail of revenue expenditure in terms of Income Tax prior to issuance of notfn No. 14/96 dtd 23/7/96. Accordingly I order that their availment of Modvat credit for the relevant period is in order and is accordingly restored if already reversed.

There shall be no penalty for reasons given and accordingly the penalty imposed in the impugned order is set aside. Order in regard to interest is also set aside.

i) Although Commissioner (Appeal) has allowed partial relief of credit upto 23/7/96 as against the demand for the period 1/4/94 to 31/3/99 entire penalty & interest has been waived.

ii) Assessee suppressed the fact of claim of Revenue expenditure during the period 23/7/96 to 19/8/99 although in 57T(1) declaration he was required to declare non-availment of depreciation Under Section 32 & Revenue expenditure in view of notfn No. 25/96-CE (NT) dtd 31/8/96 and hence, extended period rightly

invoked.

iii) Mandatory penalty Under Rule 57U(6) read with Section 11AC and retrospective interest Under Rule 57U(8) read with Section 11AB applicable for demands for extended periods.

iv) Defaults in complying with the requirements of statute sufficient for imposition of penalty based on: 2. The retrospective amendment of the bar of availment of Revenue Expenditure in Rule 57R(5) & 57R(8) by Finance Act 2003 Section 149 would render the objection of Revenue in this appeal of the assessee having availed benefit of Revenue. Expenditure under the provision of Income Tax Act 1962 to be not valid. Therefore, without going into the other aspects, this appeal is to be dismissed in view of this amendment of the rules retrospectively.

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