**Commissioner of Central Excise Vs. Vst Industries Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/39890

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT

**Decided On :** Aug-03-2005

**Reported in** : (2005)(190)ELT459Tri(Bang.)

**Judge** : S Peeran, J T T.K.

**Appellant** : Commissioner of Central Excise

**Respondent** : Vst Industries Ltd.

**Judgement** :

1. These appeals have been filed by the Revenue against Order-in-Appeal No. 76 to 82/2004 (H-II), dated 10-11-2004, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

The appellants are manufacturers of cigarettes. Due to lack of demand and also some manufacturing difficulties, they requested the Department for permitting them to issue the non-moving stocks for slitting so that the tobacco contained in them could be recycled.

The Original authority observed that by way of slitting, the entire contents of the cigarettes are not wasted. The cut tobacco is retrieved and used for making fresh cigarettes with fresh batch of inputs and packing materials. The appellants availed credit on inputs and the packing materials used along with retrieved cut tobacco. It was alleged that the appellants availed credit on the inputs and packing materials twice in view of the recycling of defective cigarettes. As the duty is paid only once on the cigarettes manufactured, using the retrieved cut tobacco, credit of duty is available on the other raw materials and packing materials only once and it was ordered that the credit taken on the first issue of inputs and packing materials should be reversed. His appellants approached the Commissioner (Appeals) who allowed the appeal relying on Board's Circular dated 7-8-2002. According to the Circular, Modvat credit on duty on inputs contained on which remission has been granted shall be admissible and reversal shall not be necessary. The Revenue is aggrieved over the Order-in-Appeal on the ground that the Board Circular dated 7-8-2002 which has been relied on by the Commissioner (Appeals) has been withdrawn by the Circular No. 800/33/2004-CX., dated 1-10-2004.

3. Shri Ganesh Havanur, learned SDR appeared for the Revenue. He reiterated the ground of appeal.

4. Smt. L. Maithili, learned Advocate appeared on behalf of the Respondents. She submitted that the cut tobacco and waste paper were used in the manufacture of cigarettes and input credit was taken. When the cigarettes which are not useable have been slitted, the tobacco obtained was recycled. The appellant is not taking any credit of duty again. It is true that while re-cycling defective cigarettes, the paper in the cigarettes becomes waste. Similar is the case with packing materials. In any case, as per Rule 57D, no duty can be demanded on the ground that the input used is contained in any waste which arise in the course of manufacture. She relied on the decision of this Bench in VST Industries Ltd. v. Commissioner of Central Excise, Hyderabad wherein it has been held that when the duty on oily cigarettes was remitted by the Commissioner, no duty can be demanded on the cut tobacco as cut tobacco has been put to intended use as provided in the Notification No. 121/94-C.E. Further, she relied on the Supreme Court decision in the case of BPL Display Devices Ltd. v. Commissioner of Central Excise, Ghaziabad [2004 (174) E.L.T. 5 (S.C.)] wherein it has been held that the word 'for use' is to be construed to mean intended 'for use'. Further she relied on the decision of the Tribunal in the case of Bakelite Hylam Ltd. v. CCE, Hyderabad [Final Order No.199/2004, dated 10-2-2005]. In the above mentioned case, it was held that in respect of goods damaged in transit, it cannot be said that the inputs had not been utilised and hence, the Modvat credit is not reversible.

5. We have gone through the records of the case carefully. The Commissioner (Appeals) has held that there cannot be one to one correlation between the input and output and in view of the various case laws and Board Circular, the appellant is entitled to the Modvat credit on the inputs contained in the defective cigarettes. We find that the Order-in-Appeal is very detailed and reasoned one. There is only a reference to the Board's Circular dated 7-8-2002 in respect of the credit of duty paid on inputs contained in finished products on which remission has been granted. Since the above mentioned Board's Circular on which the Commissioner (Appeals) has been withdrawn, the Revenue has come in appeal. In our view, irrespective of the Board's Circular of 2002 & 2004, the inputs used in defective cigarettes which have been taken for slitting have been used in the manufacture of cigarettes and the retrieved tobacco is re-used. As regards the packing materials and the cigarettes paper, they have become a waste. On that count, we cannot hold that the credit taken is reversible. We also do not find any evidence for having taken credit on inputs twice. Under these circumstances, the case laws cited by the learned Advocate for the Respondents are very relevant. We do not want to interfere with the Order-in-Appeal. Therefore, the Revenue's appeals are rejected.

(Operative portion of the order has been pronounced in the open Court on completion of hearing)