

Amit Engineering Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-2005

Reported in : (2006)(105)ECC124

Judge : S T T.V.

Appellant : Amit Engineering

Respondent : Cce

Judgement :

1. M/s Amit Engg. are the manufacturers of Tractors and Railway parts availing deemed credit under Notification No. 58/97-CE dated 30.08.1997 issued under Rule 57-A(6) of the Central Excise Rules, 1944. The said Notification allows credit @ 12% of the invoice value on declared inputs to manufacturers of final products that is deemed to have been paid under Section 3-A of the Act.

2. The main issue of the subject case revolves around the following conditions of the said Notification : 4. The provisions of this notification shall apply to only those inputs which have been received directly by the manufacturer of the final products from the factory of the manufacturer of the said inputs under the cover of an invoice declaring that the appropriate duty of excise has been paid on such inputs under the provisions of Section 3A of the said Act.

3. The learned Advocate informs me that the deemed modvat credit has not been allowed in respect of the following situations : (i) Where the invoice states that duty

has to be discharged under Rule 96-ZP(3); and (ii) Where the duty liability discharged under Rule 96-ZP(3) and the deemed credit is denied on the basis of reports obtained from jurisdictional Supd. stating appropriate duty as determined by the Commissioner not being discharged 4. In support of his contention, the learned Advocate relies upon the following case laws :Vikas Pipes v. CCE, Chandigarh-II , wherein the Hon'ble High Court has held that since there is no requirement in the Notification that the assessee has to lead evidence to show that the supplier had discharged its excise duty liability, the Tribunal was in error in disallowing the Modvat credit to the assessee.Delhi Steel Industries v. CCE, Chandigarh 2002 (149) ELT 673 (T-Del.), wherein the Tribunal has held that any denial of the deemed modvat credit on the ground of absence of declaration by the input-manufacturers in terms of para 4 of the Notification will be repugnant to the substantive Page 0127 provision of para 2 of the Notification.... It is not open to the departmental authorities to deny the deemed modvat credit on the ground of absence of input-manufacturers' declaration in terms of para 4.CCE, Panchkula v. Knitwell India Pvt. Ltd. , wherein it was held that credit cannot be denied to the input recipient even in absence of invoice declaration in terms of para 4 of notification No. 58/97-CE that the appropriate duty of excise has been paid on such inputs under the provisions of Section 3A of Central Excise Act, 1944.

5. The learned JDR reads out the condition incorporated in Notification No. 58/97-CE which clearly stated that: (i) Manufacturer has to receive directly from the factory of the manufacturer of inputs under the cover of an invoice; and (ii) The invoice should contain a declaration that the appropriate duty of excise has been paid on such inputs under the provisions of Section 3A of the said Act.Commissioner of Central Excise, Ludhiana v. Filtex Indus. Ltd. 2004 (176) ELT 298, in which it was held that, in terms of Notification No. 58/97-CE(NT), assessee required to fulfil two conditions, firstly, that he had received the inputs directly from the manufacturer, and secondly that the manufacturer had discharged appropriate duty on those inputs - Declaration regarding the payment of duty furnished by the manufacturer on the invoices that 'duty liability to be discharged under Rule 96-ZP(3) of erstwhile Central Excise Rules, 1944' cannot be equated with a declaration 'duty liability had been discharged under Rule 96-ZP(3) ibid' - Second condition of the notification having not been fulfilled, respondents not eligible for

deemed Modvat credit Commissioner of Central Excise, Ludhiana v. Punia Engg. Co. 2004 (175) ELT 582, in which it was held that, invoice through which assessee purchased inputs from supplier, not bearing declaration of their having discharged duty liability - wide gap between express "duty has been discharged" as used in Notification No. 58/97-CE and expression "duty to be discharged", as stamped on invoices issued by supplier of inputs - Duty liability not having been discharged, deemed Modvat credit disallowed -Rule 57G of erstwhile Central Excise Rules, 1944 -Rule 13 of Cenvat Credit Rules, 2004.

7. I have examined the case records and heard both sides. I find that Notification No. 58/97-CE, though at para No. 2 therein appears to suggest a liberal availment of deemed credit on the inputs declared, actually vide Para No. 4 it restricts the allowance of deemed duty credit i.e only in respect of those inputs which have been received directly by the manufacturers from the factory of the manufacturer of the said inputs under the cover of Page 0128 an invoice declaring that the excise has been paid on such inputs. Perhaps this is the reason why the Tribunal in the case of Delhi Steel Industries v. CCE, Chandigarh, supra, had observed that any denial of the deemed credit in terms of para 4 will be repugnant to the substantive provision of para 2 of the Notification, In any case apparent differences in approach have surfaced in the Tribunal's decisions, as referred to above. The Registry may, therefore, place the matter before the Hon'ble President so as to enable him to constitute a Larger Bench for arriving at a finality.

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