Commissioner of Central Excise Vs. Echjay Industries Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-09-2005

Reported in : (2006)(104)ECC517

Judge : S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Echjay Industries Pvt. Ltd.

Judgement :

1. These three appeals are being disposed off by this common order.

Assessee, the respondents herein processed goods received for job work under notification 214/86 and cleared the same without payment of duty and reversal of credit on inputs 'fuel' used in the processing of the goods received for job work. The respondents had taken credit of duty on Carbon Black Feed Stock and Furnace Oil to be used as fuel. These inputs were used as fuel for their own product as well as for the job work being undertaken for others. Notices were issued for contravention of provisions of Rules 57CC(1) & 57AD(1) of the erstwhile Central Excise Rules 1944 and Rules 6(1) 2 of Cenvat Credit Rules 2002 read with provision of Central Excise Act and demands of credit wrongly availed on fuel was confirmed along with penalties. The Commissioner (Appeals) passed in the order now impugned after I find that the appellants have pleaded that the said provisions of erstwhile Rule 57C is not applicable in case of inputs Fuel. Hon'ble CEGAT in the case of Indore Steel & Iron Mills Ltd v. CCE Indore reported in 2002

(51) RLT 174 (CEGAT) has held as under at para 6.

... The question is whether the appellants are required to reverse the modvat credit/pay duty proportionate to the furnace oil used in the manufacture of wire rods cleared without payment of duty. The provisions of Sub-rule (2) of Rule 57C are already spelt out in para 4 above in this order. The Sub-rule (3) of this rule specifically provides the exclusion of Sub-rule (2), in respect of the use of fuel. Further, in terms of the provisions of Rule 57CC(1), when common inputs are used by a manufacturer in the manufacture of duty paid as well as exempted goods, the manufacturer shall pay an amount equal to eight percent of the price of the exempted goods. In this rule also an exception is crated for the fuel used as an Page 520 input used as fuel and manufacturers a final product or products, a part of which is cleared without payment of duty, he will not be required to pay 8% of the price of such products cleared without payment of duty. A comprehensive and harmonious reading of the above provisions leads me to conclude that the rules have created an exception in respect of the inputs used as fuel and neither any modvat credit is required to be reversed for such input used in the manufacture of final products cleared without payment of duty nor such final products are called upon to pay an amount @ 8% of their price. Consequently, the impugned order is set aside and the appeal is allowed.

The above view of CEGAT was further relied and supported by CEGAT in the following cases.

Further the denial of credit by the Jt. Commissioner on the ground that revision application has been filed against the decision of CEGAT in the case of Indore Steel & Iron Mills Ltd cannot be sustained until stay is obtained or the order is reversed by higher forum. The judicial disciplines require that a judgement has to be respected so long as there is no stay/reversal of the order by the higher judicial forum.

In view of the rulings of CEGAT and the specific exclusion provided for fuel in Rule 57CC /Rule 6 (2)/Rule 57AD, I allow the appeals set aside the impugned order. Penalty and interest imposed is also set aside.

2. No contrary decisions of the Hon'ble High Court have been shown Relying on the Larger Bench decision in the case of Sterlite Industries Ltd v. CCE, Pune CCE, Tirunelveli v. Sudarsanam Spinning Mills , CCE, Delhi-IV Faridabad v. Super Auto (I) Ltd. 2004 (61) RLT 750 (CESTAT-Del), Shakti Insulated Wires Ltd v.CCE, Mumbai(Tri.Mumbai), National Engineering Ind.

Ltd v. CCE, Jaipur(Tri.Del), Hindustan Zinc Ltd v.CCE VisakhapatnamNavsari Oil Products Ltd v. CCE, Surat(Tribunal), Indore Steel & Iron Mills Ltd v. CCE Indore 2002 (147) ELT 611 (Tri.Del). No merits are found in these appeals filed by Revenue as the matter is well covered in favour of the assessee.