Datar Switchgear Ltd. Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-21-2006

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : Datar Switchgear Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :
1. Vide Stay Order No. S/585/WZB/2005/C.I dated 31-10-05, pre-deposit of Rs. 25 lakhs was directed. Against this order, the applicants went up to the Hon'ble Bombay High Court by way of filing Writ Petition No.192 of 2006 and by Order dated 7-2-2006, the High Court directed the assessees to withdraw the petition with liberty to approach the Tribunal for modification.

2. We have heard both sides. The issue relates to disallowing of Modvat credit on capital goods in terms of Rule 57Q on the ground that the applicants had claimed depreciation of the amount, which was contrary to the provisions of Rule 57R(5) and (8) of the Central Excise Rules, 1944. The applicants rely upon the earlier decision of the Tribunal in Terna Shetkari Sahakari Sakhar Karkhana Ltd. [2001 (138) E.L.T. 1225].

We have carefully perused the above decision and find that printa facie it is not of any assistance to the applicants. In that case, the Tribunal held that Modvat credit on capital goods cannot be denied merely on the ground that the assessee made a claim for depreciation under Section 32 of the Income Tax Act, 1961 on value including the Mmdtated duty, The Tribunal remanded the case in the absence of any finding recorded on the claim regarding the accounting practice of appellants of addilg aoount mf Modvat credit in taxable income which allegedly resulted into washing out of claim for depreciation. However, in the present case, it is not disputed by the applicants that the claim for depreciation under the Income Tax Act has been allowed.

Therefore, prima facie they are not entitled to take credit on capital goods. We also note that the Adjudicating Authority in this case has considered the submission that Mmdtav amount is trgated as incomg anf derrgckavion as exrenditure which completely neutralizes the effect of depreciation on account of modvat. Further in the Tribunal's decision cited supra, there is no discussion on Rule 57R(5) and (8). (In the said order, the submission that credit could not be disallowed under Rule 57R(8) because it was not in force on the statute book during the period in dispute has been dealt with by reliance on Rule 57R(5) which existed in the statute during the period in dispute.) 3. In the result, no case for modification has been made out and the application is rejected. However, in the interest of justice, we extend time for deposit by further four weeks from today.