

Amit Engineering and H.S. Sons Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-24-2006

Reported in : (2006)(109)ECC665

Judge : N T C.N.B., M Ravindran

Appellant : Amit Engineering and H.S. Sons

Respondent : Cce

Judgement :

1. This matter has been referred to larger bench as there is difference of opinion between two Single Members decision as regards the availment of deemed Modvat credit as per provisions of notification No. 58/97 - CE dated 30th August 1997.

3. In order to appreciate the dispute it is necessary to refer to the provisions of notification No. 58/97-CE which are as under: In exercise of the powers conferred by Sub-rule (6) of Rule 57A of the Central Excise Rules, 1944, the Central Government hereby declares the following inputs and the final products falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) namely: 2. The Central Government further declares that the duty of excise under the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as said Act), shall be deemed to have been paid (hereinafter referred to as said Act), shall be deemed to have been paid (hereinafter referred to as deemed duty), on the inputs declared herein and the same shall be equivalent to the amount calculated at the rate of twelve per

cent of the price, as declared by the manufacturer, in the invoice accompanying the said inputs (hereinafter referred to as invoice price), and credit of the deemed duty so determined shall be allowed to the manufacturer of the final products.

Plain reading of the above notification will reveal that the notification intends to give benefit of deemed credit to the purchasers of the Hot re-rolled products falling under specified headings and the same will be considered as duty paid. The dispute has arisen, whether the receiver of the re-rolled products can avail the deemed credit, if the invoices of supplier do bear the wordings 'duty liability discharged under Rule 96ZP.' 4. The tribunal in the case of Delhi Steel Industries 2002 (149) ELT 673 (Tri) has held as under: This question, in my view, requires to be considered in the light of the provisions of Para 2 of the Notification, which reads as under: ...The Central Government further declares that the duty of excise under the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as said Act), shall be deemed to have been paid (hereinafter referred to as deemed duty), on the inputs declared herein and the same shall be equivalent to the amount calculated at the rate of twelve per cent of the price, as declared by the manufacturer in the invoice accompanying the said inputs (hereinafter referred to as invoice price), and credit of the deemed duty so determined shall be allowed to the manufacturer of the final products.

The above para of the Notification is a declaration by the Central Government that the duty of excise under the Central Excise Act shall be deemed to have been paid on the inputs declared in the Notification. The substantial provisions of deemed Modvat credit are contained in Paragraphs 1, 2 and 3 of the Notification. The rest of the Notification deals with the conditions for availment of deemed Modvat credit. The condition stated in Para 4 of the Notification to the effect that the inputs-manufacturers' invoices should declare that the appropriate duty of excise has been paid on the inputs under the provisions of Section 3A of the Central Excise Act should be interpreted in a manner not repugnant to the substantive provisions contained in Paras 1, 2 and 3 of the Notification. Para 2 of the Notification contains the Central Government's declaration that the duty of excise under the Central Excise Act shall be deemed to have been paid on the inputs declared in the Notification. 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 provisions of Para 2 of the Notification. The declaration-related condition in Para 4 is virtually of no significance in the light of Central Government's declaration contained in Para 2 of the Notification. The declaration-related condition in Para 4 is virtually of no significance in the light of the Central Government's declaration contained in Para 2 of the Notification. I am, therefore, inclined to accept Id. Counsel's argument that, in view of the Government's declaration, 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.

5. On the other hand the tribunal in the case of Punia Engineering Co.

2004 (175) ELT 582 (Tri) has held as under: Cenvat/Modvat - Deemed credit - Invoices through which assessee purchased inputs from suppliers, not bearing declaration of their having discharged duty liability - Wide gap between expression "duty has been discharged" as used in Notification No. 58/97-C.E. 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.

6. The issue of denying the deemed Modvat credit has arisen on interpretation of paragraph 4 of the notification No. 58/97. We find that the said paragraph does not mandate any specific wordings to be incorporated in the Invoices. Plain reading of the said paragraph would indicate that appropriate duty has to be paid under the provisions of Section 3A of the Central Excise Act. Further, we find that Section 3A of the Central Excise Act, 1944 does not have any restrictions on the availment of the deemed Modvat credit. The said section only mandated for payment of the duty arrived on the basis of Capacity of production as determined by the competent authority.

7. We also find that the re-rolling mills whose production capacity has been determined by the competent authority, has to discharge the duty liability as provided in the Rule 96ZP of the Central Excise Rules, 1944. If he does not discharge the duty liability, then the provisions of Rule 96ZP also have in built mechanism for the recovery of the same.

We find that the said Rule 96ZP provides for the payment of duty by the re-rolling mills once in a fortnight/month. For example if a manufacturer clears his final products on 2nd of a month he is required to discharge the duty on such goods by 20th of that month. When the statute itself provides the manufacturer to pay the duty once in fortnight/month, it would be incorrect to deny the Modvat credit to the recipients of the goods on the ground that the manufacturer has not discharged the duty liability and that there is no indication of the same on the invoices. If the provisions of para 2 of the notification 58/97 are read with the provisions of Rule 96ZP, then it has to be concluded that the government has considered the clearances made by the re-rolling mills as duty paid clearances. If the manufacturer delinquent, the provisions of Rule 96ZP provides for the recovery of the same from the manufacturer.

8. In view of the above, we hold that the view taken by the Tribunal in the case of Delhi Steel Industries case is a correct proposition of law, and the same is upheld in this reference and hold the reference in favor of the assessee.

9. Since no other issues are involved in these cases, the appeals are allowed with consequential relief, if any.

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