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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-18-2006

Reported in : (2006)(113)ECC595

Judge : S T Chittaranjan

Appellant : Consumer Packaging Services (i)

Respondent : Ccex

Judgement :

1. Heard both sides. The appellants have taken 50% of the duty credit on the impugned capital goods in the year of receipt of the same and have cleared the capital goods subsequently on payment of the full duty. They have availed of the remaining 50% of the duty credit in the subsequent year, denial of which has given rise to the present appeal.

I find that in a similar case, full duty credit has been allowed by another Bench of the Tribunal in the case of Hindustan Lever Ltd. v.CCE, Pondicherry 4. Rule 4(2)(a) & (h) of Cenvat Rules, 2001, as it existed at the relevant time, is reproduced below: (a) The Cenvat credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the said financial year.

(b) The balance Cenvat credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer. If the capital goods other than components, spares and accessories, refractoreis and refractory materials and goods falling under Heading No. 68.02 and sub-heading No. 6801.10 of the first Schedule to the Tariff Act are in the possession and use of the manufacturer of final products in such subsequent year.

5. Now, it is evident that the balance 50% of duty paid on the capital goods can be taken in the subsequent financial year only when the capital goods are in possession and use of the manufacturer of final products. In the appellant's case, this condition will not be satisfied as he has transferred the capital goods in question to another unit of his own. Thus, the provisions of the Rule, in this given situation, would have resulted in taking only 50% of credit of the duty paid on the capital goods even though duty was paid in full on the capital goods. The intention of the legislature could not have been to defeat the object of the Cenvat Rules.

6. The above Rule underwent a change w.e.f. 1.3.2002. Proviso to Rule 4(2) of the Cenvat Rules, 2002 reads as follows: Provided that, the Cenvat credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if the said capital goods are cleared as such in the same financial year.

7. The impugned goods, it may be recalled, were received in the factory und removed therefrom in the same financial year albeit in the year where the above provision did not exist. In fact the Cenvat Rules, 2001 is silent on as to what should be the quantum of credit, that can be taken if the capital goods are removed from the factory as such. In the absence of such a provision it is possible to take a cue from the specific provision made in the subsequent Rules covering the situation. It is pertinent that prior to Cenvat Rules, 2001 which came into effect from 1.7.2001. Rule 57Q(1) permitted taking of full credit (100%) of the duty paid on the capital goods if such capital goods are removed from the factory wherein they were received in the same financial year. This position would therefore add credence to the theory that what was specifically allowed before and after should

be deemed to have been allowed during the sandwiched period. I agree with the contention of the learned Advocate that the provisions 21 and 24 of the General Clauses Act, 1897 would come into play according to which the provisions prevalent after 1.3.2992 and prior to 1.4.2000 would be deemed to have been in operation during the period of interregnum. The appellants are entitled to take hundred percent of credit of duty paid on the capital goods received in their factory.

2. Following the ratio of the above said order in the case of Hindustan Lever Ltd., since a similar issue is involved in this case, I set aside the impugned order passed by the lower appellate authority and allow the appeal with consequential benefit to the appellants.

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