

Bhoorathram and Co. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-18-2006

Reported in : (2006)(113)ECC303

Judge : N T C.N.B.

Appellant : Bhoorathram and Co.

Respondent : C.C.E.

Judgement :

2. The facts of the case are that the appellant was a manufacturer of Prestressed Cement Concrete Pipes which are liable to Central Excise duty. The appellant was availing itself of Modvat credit on inputs used in such manufacture. Input credit so taken was utilised for payment of duty on these pipes.

3. When there was no credit balance in the appellant's modvat account (the entire credit having been utilized for payment of duty) on 3.10.2002, the pipes in question came to be exempted from central excise duty. The Central Excise authorities found that part of the inputs on which credit had already been availed was lying unutilized in the appellant's factory on the date of exemption. It was also found that some of the inputs were also in the manufactured goods lying in stock, and in the final products under manufacture. Based on this, demand was raised under Rule 12 of Cenvat Credit Rules, 2002 seeking to recover the Cenvat credit (Rs. 7,34,458/-) attributable to aforesaid inputs in stock.

4. The appellant resisted the demand by contending that Rule 12 is not attracted at all inasmuch as, Cenvat credit had been correctly taken and correctly utilized before the exemption came into force with effect from 3.10.2002. This objection of the appellant was rejected and demand confirmed in adjudication and appeal. Commissioner (Appeals) has specifically relied on the decision of this Tribunal in the case of Albert David Ltd. v. C C.E., Meerut in support of the decision.

5. The submission of the learned Counsel for the appellant is that the issue remains fully covered by the judgment of the Hon'ble Supreme Court in the case of C.C.E., Pune v. Dai Ichi Karkaria Ltd. , the decision of the Larger Bench of this Tribunal in the case of C.C.E., Rajkot v. Ashok Iron & steel Fabrication and the Final Order No. 705/06 -SM(BR) passed by the Tribunal in the case of C.C.E., Chandigarh v. CNC Commercial Ltd. reported in 2006 (136) ECR 0128. The contention is that it is well settled that Cenvat credit is indefeasible and once it has been correctly taken and utilised for payment of duty, no demand can be made, as there is no one-to-one correlation between input and final product under Modvat credit scheme. Learned Counsel would submit that since law on the subject remains directly settled by the Hon'ble Supreme Court in the case of Dai Ichi Karkaria, the judgment of this Tribunal in the case of Albert David Ltd. would have no application.

6. The learned DR would point out that facts in the present case are the same as in the case covered by the Tribunal in the case of Albert David Ltd. and therefore, the lower authorities were right in applying that decision to the present case. It is also being pointed out that appeal against that order was rejected by Hon'ble Supreme Court.

7. I have perused the record and considered the submissions made by both sides. At the time when the appellant took the credit on inputs as well as when it utilised the credit for payment of central excise duty, rules permitted taking of credit and its utilisation. Thus, taking and utilisation of credit was in terms of the law and there was no error.

The Hon'ble Supreme Court has held in the case of Dai Ichi Karkaria that Modvat credit is indefeasible and there is no one to one correlation between the input

credit and final product (duty paid). The order of the Larger Bench in the case of C.C.E., Rajkot v. Ashok Iron & Steel Fabricators and the C.C.E., Chandigarh v. CNC Commercial Ltd. were passed following the judgment of the Hon'ble Supreme Court.

8. Rule 12 has no application in the present case since, as already noted, taking of the credit and its utilization were legally correct.

Subsequent developments like exemption to the final product is no ground for reopening the credit account.

9. In the result, the appeal is allowed with consequential relief, if any, to the appellant.

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