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Collector of C. Excise Vs. Autofield Engineering Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-01-1994

Reported in : (1994)(74)ELT656Tri(Mum.)bai

Appellant : Collector of C. Excise

Respondent : Autofield Engineering Pvt. Ltd.

Judgement :

1. This is a Reference Application moved by the Collector in respect of this Bench Order No. 1856/93-WRB, dt. 21-9-1993.

2. The issue involved in that appeal was whether higher notional credit, which was not initially taken at the time of entry of inputs but subsequently claimed, could be allowed or not.

3. The respondents received certain inputs during the period April 1988 - August 1988 from small scale units paying duty at the concessional rate under Notification No. 175/86. In such cases, they are entitled to claim higher notional credit in terms of Rule 57B of the Central Excise Rules. However, at the time of initial taking of the credit, by mistake, they took only the actual duty paid as credit instead of higher notional credit eligible to them. On noticing this mistake, they wrote a letter on 14-9-1988 requesting for allowing the duty credit eligible to them on account of higher notional credit. This request was disallowed by the authorities below and hence the appeal came up to the Tribunal. In the aforesaid order, we held that where the credit was not initially taken by mistake, which is sought to be rectified

within the period of six months, no objection can be taken and thus the appeal of the respondents was allowed. The present Reference Application is in respect of the aforesaid order.

4. Though the respondents have been issued a notice, none attended during the hearing. All the same, we find that on an identical issue, a reference has been made to the Bombay High Court in the case of Collector of Central Excise, Pune v. Serene Dyestuff Industries Ltd. 1994 (69) E.L.T. 665. We have also set out our views clearly in the aforesaid order while referring the matter to the Bombay High Court.

The relevant observations are reproduced below : "Shri Gupte, sought to rely on the judgment of the Gujarat High Court in the case of Wipro Ltd. On perusal of the judgment, I observe that para (9) is worth noting, which is reproduced below: "It may also be noted that there is no provision in the Rules governing MODVAT credit for varying the credit once taken, i.e. if a short-credit is taken by an assessee, there is no specific provision enabling the assessee to claim the differential credit subsequently.

But having regard to the overall scheme of the Act and the Rules, it would be proper to hold that if the assessee is eligible to avail of the credit and for whatever reason he has taken short-credit, then if the assessee claims the differential credit subsequently and if he proves his eligibility then he may be entitled to claim the same, provided he claims the same within the period of limitation and provided further that he satisfied all the relevant conditions. By necessary implication the limitation period of six months as provided under Section 11B of the Act has got to be read as limitation prescribed for claiming such differential credit. We are told that such is the view taken by CEGAT also in the case of Collector of Central Excise v. Mysore Lac & Paint Works Ltd., reported in 1991 (52) E.L.T. 590. If that be so believe that the view taken by CEGAT is just and proper and is in accordance with the general scheme of the Act and the Rules and the Scheme of MODVAT. Therefore, the contention that the provisions of Section 11B of the Act will not apply has no substance and the same is rejected. The contention that for the cases falling under Section AAA in Chapter 5 of the Rules which contain Rule

57K to Rule 57P no period of limitation applies, is not correct. The view taken by CEGAT in the aforesaid decision appears to be just and proper and in accordance with the overall scheme of the Act and the Rules." From the above, it is observed that though that question arose with regard to money credit, the Hon'ble Gujarat High Court had adopted the normal period of six months prescribed under Section 11B with regard to refund, in taking money credit, which was not taken at the initial stage. In my view, this view taken by the Gujarat High Court is in agreement with the view taken by this Bench. I am also to observe that what is not prohibited specifically in the Rule can also be permitted, provided the eligibility on merits is not disputed and the claim is made within a reasonable period." 5. Though we are of the view that notwithstanding the absence of any specific provisions governing the limitation period within which short credit not taken initially can be claimed, in the Modvat rules, the provisions of Section 11B can be taken into account, as has been done by the Gujarat High Court in the case of Wipro Ltd. However, this is a point of law, on which we would like to have an authoritative pronouncements from the High Court. Only in this view, a reference on the same issue was admitted by one of us sitting as a Single Member. We agree for making a reference for the same reason on the question, as framed below.

"Whether in the context of the provisions of Rule 57B of the Central Excise Rules read with Exemption Notification No. 175/86 (para 4 thereof)/ the Tribunal is justified in holding that higher notional credit, though otherwise eligible at the time of entry of the inputs, but not taken, could be taken at a subsequent stage within a period of six months, applying the time limit prescribed under Section 11 B." 6. The Registry is directed to send the file containing the relevant orders to the Bombay High Court for consideration of the Reference Application along with the Reference Application already made in the case of Serene Dyestuff Industries Ltd., reported in 1994 (69) E.L.T.665 (Tribunal).

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