SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Weston Electronics Ltd. Vs. Collector of Central Excise

Weston Electronics Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/8097

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-29-1994

Reported in : (1995)LC326Tri(Delhi)

Appellant : Weston Electronics Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The above application has been filed in terms of Section 35G(1) of the Central Excises & Salt Act, 1944 seeking reference to the High Court of the following questions of law purporting to have arisen out of the Tribunal's Final Order No. A/766/94-NRB, dated 24-8-1994: 1. In the facts and circumstances of the case, whether the Tribunal is correct in holding that Modvat credit in respect of goods cleared by 100% EOU would be available only to the extent of countervailing duty portion of excise which has actually been paid by the said 100% EOU. 2. Whether in terms of Rule 57A read with Notification No. 177/86- C.E., dated 1-3-1986 modvat credit can be allowed to the extent of countervailing duty leviable on the like goods if imported into India even when 100% EOU has not paid the countervailing duty portion of the excise duty? 3. In the facts and circumstances of the case, just because the 100% EOU is exempted from the payment of the countervailing duty portion of excise, whether entire amount of duty of excise paid by 100% EOU can be denied under Rule 57A? 4. In the facts and circumstances of the case, whether duty of excise paid by the 100% EOU at the time of clearance to DTA in terms of Notification No. 81/91-C.E. as amended by Notification No.

97/91-C.E., can be allowed as Modvat credit in terms of Rule 57A read with Notification No. 172/86-C.E., dated 1-3-1986? 5. Whether the entire duty paid by 100% EOU in terms of Notification No. 87/91-C.E. as amended by Notification No. 97/91-C.E. issued under the Central Excises and Salt Act can be availed as modvat credit? 6. In the facts and circumstances of the case, whether the Tribunal is correct in holding that modvat credit would be available only when the 100% EOU has actually paid the countervailing duty portion of Excise duty." 2. The facts leading up to the filing of the application are briefly that the applicants herein who are manufacturers of television sets and parts thereof, availed the benefit of modvat scheme and filed the requisite declaration tinder Rule 57G, specifying the inputs used in the manufacture of the above-mentioned final products. Some of the inputs were received from their own 100% Export Oriented Unit (hereinafter referred to 100% EOU) under the cover of various gate passes. While clearing the same to the applicants in the Domestic Tariff Area, the 100% EOU paid excise duty as prescribed under Notification No. 97/91-C.E., dated 7-10-1991 which duty is equivalent to 50% of the customs duty payable on like goods imported into India.

The additional duty on these picture tubes was exempt by virtue of Notification No. 127/84. Modvat credit taken against inputs supplied by the 100% EOU was sought to be denied on the ground inter alia 100% EOU has not paid the additional duty under Section 3 of the CTA, 1975 on the inputs supplied to the applicants and that the modvat credit of duty paid by the 100% EOU would be restricted only to the extent of duty which is equal to the additional duty leviable on the like goods under Section 3 of the CTA, 1985 and paid on such inputs, by issue of a show cause notice which was replied to. The adjudicating authority confirmed the charges in the show cause notice and disallowed the entire credit of duty paid on the inputs received by the applicants from the 100% EOU. The Tribunal upheld the finding of the adjudicating authority, which has given rise to the above reference application.

3. Shri V. Lakshmikumaran, learned Counsel contends that notwithstanding total exemption from the countervailing duty component of the excise duty payable by the 100% EOU, for the purposes of granting modvat credit, the Department has to allow an amount equivalent to the additional duty paid /payable on the like goods

(the inputs in question) when imported into India. In this context he refers to the first proviso to the Notification No. 177/86 and submits that the words "shall be restricted to the extent of duty which is equal to the additional duty leviable on like goods under Section 3 of the CTA1975...paid on such inputs" contained in the proviso should be read as a whole and expression "paid on such inputs" should not be read in isolation from the earlier half of the proviso set out above. He, therefore, pleads for reference of the questions of law set out above to the High Court. Shri K.K. Dutta, learned DR submits that the Tribunal has applied the correct interpretation to the proviso in Notification No. 177/86 in Para 13 of its order, having regard to the emphasis on the word "paid on such inputs" and, therefore, no question of law arises for reference.

4. We have heard both sides. Notification No. 177/86 specifies certain final products in respect of which various duties such as excise duty, special excise duty, under the various Finance Acts and additional duty under Section 3 of the CTA 75 equivalent to the excise duties specified in the earlier sub-clauses, paid on inputs is to be allowed as credit, when used in or in relation to the manufacture of the said final products and the credit of duty so allowed is to be utilised for payment of duty leviable on the said final products or as the case may be, on such inputs, if such inputs have been permitted to be cleared under Rule 57F. Proviso 1 to the notification reads as under : (1) credit of specified duty in respect of any inputs produced or manufactured - (a) in a free trade zone and used in the manufacture of final products in any other place in India; or (b) by a hundred per cent export-oriented undertaking and used in the manufacture of final products in any place in India, shall be restricted to the extent of duty which is equal to the additional duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) (equivalent to the duties of excise specified under (i) to (iid) above), paid on such inputs;" 5. The Tribunal has interpreted the proviso to mean that the amount of credit of specified duty was required to be restricted to the amount of additional duty actually paid on the inputs and since no additional duty was paid, the applicants are not entitled to modvat credit.

However, this proviso is certainly capable of a different interpretation viz. the interpretation as urged by the learned Counsel for the applicants. The

interpretation of a notification is definitely a question of law. We are also not aware of any judgment of the High Court or the Supreme Court interpreting this clause of the notification which in our view is an important one requiring authoritative pronouncement from the High Court. Accordingly, we propose to refer the following question which, to our minds, is relevant for the purpose : "Whether, in terms of Rule 57 A read with Notification No. 177/86-C.E., dated 1-3-1986, the Tribunal is correct in holding that modvat credit in respect of goods cleared by 100% EOU would be available only to the extent of the countervailing duty component of excise duty which has actually been paid by the 100% EOU" This question as framed above was put to both sides and agreed upon by them.

Hence the above question of law is referred to the Hon'ble Delhi High Court for its consideration.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com