

Master Quartz Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-02-1995

Reported in : (1995)LC526Tri(Chennai)

Appellant : Master Quartz

Respondent : Collector of Central Excise

Judgement :

1. This appeal is against the order of the Collector of Central Excise (Appeals), Madras. Under the impugned order the appellants have been denied the benefit of higher notional credit in terms of Rule 57B holding that the appellants case did not fall within the parameters set out under this rule.

2. The learned Consultant for the appellants pleaded that initially the suppliers of inputs to the appellants were availing the benefit of Notification 175/86 and after their clearances exceeded Rs. 75 lakhs, they opted for the benefit of Notification 72/86, as amended. He pleaded that they had opted for the benefit of Notification 175/86 and cleared their goods at the concessional rates envisaged under this Notification till the value of their clearances crossed Rs. 75 lakhs and after which limit the benefit of the lower rate of duty under Notification 175/86 ceased and they, therefore, opted for the benefit of another exemption Notification bearing No. 72/86, as amended. He pleaded that inasmuch as they had opted for the benefit of Notification 175/86 in terms of this Notification the benefit of the higher notional MODVAT credit should have been allowed to them (appellants) notwithstanding the fact that their suppliers of inputs had opted for the benefit of Notification 72/86,

as amended. He pleaded that in any case Notification 72/86 was also an exemption notification and even in such cases where the clearance was made at exempted rates and in terms of Rule 57B the benefit of enhanced notional credit should have been allowed to them. He has pleaded that the learned lower appellate authority was in error in not reading the Notification 175/86 along with the Notification 72/86 while considering the appellants' claim for higher notional credit. He has pleaded that a verification was caused to be made by the authorities with the supplier of the inputs and in the verification report as set out in the order of the learned lower authority, it is clearly stated that the suppliers of inputs to the appellants were availing of the benefit of Notification 175/86. He urged that no doubt it has been mentioned that after they had exceeded the clearance limit of Rs. 75 lakhs, they had opted for Notification 72/86, no verification was caused to be made as to whether the inputs which were supplied to the appellants were cleared under Notification 175/86 or under Notification 72/86.

3. The learned DR for the Department adopted the reasoning of the learned lower authority. He pleaded that as is clear from the report of Assistant Collector, Ahmedabad, from whose jurisdiction the inputs in respect of which higher notional MODVAT credit has been claimed originated; that the suppliers of inputs to the appellants after crossing the limit of Rs. 75 lakhs upto which limit they had cleared the goods under Notification 175/86, had opted for the benefit of Notification No. 72/86. He pleaded that the gate passes under which the inputs had been received and in respect of which higher notional credit had been claimed, showed that the goods had been cleared by the suppliers availing of the benefit of Notification 72/86. He pleaded that Notification 72/86 did not provide for taking a higher notional credit and unless such a provision was there, in terms of Rule 57B the higher notional credit could not be availed of.

4. We observe that the short point that falls for our consideration is whether in terms of Rule 57B the appellants are eligible to take higher notional MODVAT credit. Rule 57B for convenience of reference is reproduced below : "Rule 57B. Credit of duty in respect of inputs obtained from small scale manufacturers. - Notwithstanding anything contained in Rule 57A, credit of specified duty or inputs may, in a case where the duty on inputs has been paid under a notification issued

under Sub-rule (1) of Rule 8 [or Sub-section (1) of section 5A of the Act] (or section 5A of the Act, as the case may be) exempting such inputs from a part of the duty leviable thereon on the basis of value of clearances of such inputs during any specified period, be allowed at the rate otherwise applicable to such inputs but for the said notification : Provided that the said notification provides for grant of credit in respect of such inputs at such higher rates as may be specified therein."

We observe that the twin conditions which are required to be fulfilled for the purpose of higher notional credit under this rule are that the inputs in respect of which higher notional credit is claimed should have been exempted under Sub-rule 8(1) or Section 5A of the Central Excises & Salt Act for a part of the duty levied thereon on the basis of the value of the clearances of such inputs during the specified period and also that the Notification which exempts these inputs should provide for grant of a higher credit in respect of such inputs. We, therefore, now proceed to examine whether the inputs received by the appellants fulfilled these two requirements of Rule 57B. As seen from the record, the suppliers of the appellants had opted for the benefit of Notification 175/86 and cleared the goods under this Notification upto the value limit of Rs. 75 lakhs i.e. the limit provided for clearances at the exempted rates. Thereafter, they were required to, in the normal course, unless they availed of the benefit of any other Notification, to pay full rate of duty in respect of the clearances made. They at this stage opted for the benefit of Notification 72/86, which provides for a concessional rate of 5% in respect of the goods manufactured by the appellants. The question that has to be answered is whether the clearances made after the limit of Rs. 75 lakhs can be taken to have been made in terms of Notification 175/86. The answer, we are afraid, is 'No'. It is clearly seen from the report of the Asstt.

Collector, Ahmedabad, that the appellants had availed of the benefit of concessional rate of duty under Notification 175/86 upto Rs. 75 lakhs and thereafter they had opted for the benefit of Notification 72/86 under which the rate of Central Excise duty fixed is 5% ad valorem. The gate passes under which the inputs had been received also, as seen from the records, showed that the clearances had been made under Notification 72/86. We had put it to the learned Consultant as to how in the light of these the clearances of the suppliers of inputs

can be taken to have been made in terms of Notification 175/86. His plea is that once the appellants had opted for the benefit of Notification 175/86 any clearances made by the appellants even after the Rs. 75 lakhs limit, upto which the exempted rates were applicable, should be taken to have been made under the exemption Notification 175/86. As it is we observe the rate of duty applicable to the goods after the limit of Rs. 75 lakhs was crossed is the full normal rate as the Notification 175/86 does not provide for any exempted rate for the clearances after this limit of Rs. 75 lakhs. Even if the appellants can be taken to be, for the sake of argument, operating in terms of Notification 175/86 the goods cleared by the suppliers, which were received by the appellants' factory, could not be taken to be exempted goods in terms of Notification 175/86. As it is we find from the report of the jurisdictional Asstt. Collector at Ahmedabad that classification list No. 1/89-90, dated 20-4-1989 had been approved for clearance of the goods under Notification 72/86. For the purpose of Rule 57B, therefore, the goods cannot be taken to be cleared at exempted rate in terms of Notification 175/86 which alone provides for the benefit of higher notional credit in respect of the goods cleared at exempted rate under the said Notification. Therefore, the goods have to be taken to have been cleared, in the light of the above discussion, under Notification 72/86. We had put it to the learned Consultant whether this Notification provided for a higher notional credit to be allowed in respect of the clearances made under this Notification. The learned Consultant fairly conceded that this was not so. The conditions precedent for higher notional credit under Rule 57B, therefore, cannot be said to have been complied with in respect of the clearances made under Notification 72/86. A plea has been made by the learned Consultant that no verification in respect of the facts as to what has been stated by the Asstt. Collector of Central Excise, Ahmedabad, regarding the clearances made by the suppliers stated to have been made under Notification 72/86 was made. We observe once the Gate Passes show the clearances under Notification 72/86 and the letter of the Asstt.

Collector of Central Excise, Ahmedabad, confirms this and nothing further remained to be verified by the authorities. The appellants, if they had any doubt in this regard, should have made enquiries from the suppliers and got the information as to the Notification under which the inputs received by them had been cleared. They have produced no such evidence and their plea in this regard, therefore,

carries no force. In view of the above discussion we hold that the learned lower appellate authority's order is maintainable in law and the appeal is, therefore, dismissed.

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