

Engineers Pre-stressed Vs. Collr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-1995

Reported in : (1995)LC78Tri(Delhi)

Appellant : Engineers Pre-stressed

Respondent : Collr. of C. Ex.

Judgement :

1. The above application has been filed in terms of Section 35G(1) of Central Excises and Salt Act, 1944' by the Revenue for reference of the following question of law purported to have arisen out of Final Order No. A7565-566/94-NRB dated 14-6-1994 :- "Whether the party is entitled for modvat credit on duty paid inputs in terms of Rule 57H(1) of the Central Excise Rules, 1944, as contended by the department or Rule 57H(1)(ii) as contended by the Appellate Tribunal, New Delhi".

2. The facts leading up to the filing of the Reference Application are as follows :- The issue in both the appeals involves interpretation of Rule 57H of the Central Excise Rules, 1944 namely, whether credit of duty paid on inputs lying in stock as part of finished products as on 1-3-1987, is admissible in terms of Rule 57H(1). The lower Appellate authority had held that the benefit would be available only to inputs lying in stock or received on or after 1-3-1987 and then subsequently used in the manufacture of final products which are cleared on or after 1-3-1987 and that inputs which had already been consumed in the manufacture of final products lying in stock as on 1-3-1987, cannot be taken as inputs, as such lying in stock on that date. The Tribunal followed its own earlier order in the case of Collector of

Central Excise v. Hindustan Development Corporation reported in 1990 (47) E.L.T. 376 wherein the benefit of modvat credit was extended in a situation where the inputs had already been utilised prior to the stipulated date for the reason that the alternative condition covered by Rule 57H(1)(b) was satisfied.

3. Sh K.K. Dutta, learned DR submits that Rule 57H(1)(ii) is supplementary to Rule 57H which inter alia, provides for credit on inputs received by a manufacturer immediately before obtaining the dated acknowledgement of the declaration and credit, therefore, cannot be allowed on inputs used in the manufacture of final product already cleared from the factory and not available for verification. He therefore, prays that the question of law as framed in the application, be referred to the Hon'ble High Court for determination.

4. Replying to the submissions of the learned DR, the Id. Advocate Sh.

Agarwal draws our attention to Rule 57H which clearly provides that notwithstanding anything contained in Rule 57G, the Asstt. Collector of Central Excise may allow credit of duty paid on inputs received by a manufacturer immediately before obtaining the dated acknowledgement of the declaration made under Rule 57G, if he is satisfied that (a) such inputs are lying in stock or are received in the factory on or after 1-3-1987 or (b) such inputs are used in the manufacture of final products which are cleared from the factory on or after 1-3-1987. He contends that the benefit of Modvat credit has been rightly extended in this case as the second alternative condition of Rule 57H has been admittedly satisfied by the assessee herein and conditions in the Rule are disjunctive and not conjunctive. He submits that if the interpretation of Rule 57H as sought by the DR [is] to be accepted, it would mean that both the conditions stipulated in Rule 57H would have to be satisfied and this goes against the clear wording of the Rule. He therefore, submits that no question of law arises for reference to the High Court and pleads for rejection of the Reference application.

5. We have carefully considered the submissions of both the sides. We agree with the learned Counsel for the respondents that there is nothing in Rule 57H to warrant allowing of credit only on inputs which are available for verification, as the Rule clearly provides that credit can be allowed on inputs used in the manufacture

of final products which are cleared from the factory on or after 1-3-1987. We have also noted in the final order that the DR's objection to the extension of the benefit on the ground that the satisfaction of the condition in para (ii) thereof has not been established by the assessee, cannot be sustained as it is not a charge levelled against them at any stage prior to the appeal. Accordingly, we hold that no question of law arises for reference. The Reference application is hereby rejected.

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