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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Jan-19-2011

Judge : The Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal No.E/293/2004 [Arising out of Order-in-Appeal No.43/2003 (M-IV) dated 28.11.03 passed by

Appellant : Tvs Autolec Ltd.

Respondent : Commissioner of Central Excise, Chennai

Advocate for Pet/Ap. : Shri M.Kannan, Advocate. Shri C.Rangaraju, SDR.

Judgement :

Heard both sides. Shri M.Kannan, learned advocate appearing for the appellants states that the impugned capital goods in respect of which 50% credit was availed in the first year of receipt in the appellants own factory within the same year were removed to the appellants' sister concern. The appellants have reversed an amount equal to 50% of the credit amount which was taken. The department has demanded full amount of duty on the capital goods, which, according to Mr.Kannan, is not justified as only 50% of the duty amount was taken as credit. He also prays for setting aside of the penalty amount as the appellants were under a bona fide belief that only the amount of credit taken is required to be reversed.

2. Heard Id. SDR, Shri C.Rangaraju. He states that at the material time, under Rule 57AC, only 50% of the credit was available as credit in the first financial year

in respect of the capital goods. As per the condition specified in Rule 57AC (2) (b), balance 50% of the duty credit could be taken in the subsequent year, only if the capital goods remained in the possession and use of the manufacturer in the subsequent year. In this case, the appellants have violated this condition and hence they were not eligible for remaining 50% of the credit. Moreover, in terms of Rule 57 AB (1C), at the material time, when capital goods were removed as such, appellants were required to pay an amount equal to duty of excise which is leviable on such goods. Hence the demand against the appellants for paying the full amount of duty is in accordance with the provisions of law and therefore, the appeal is required to be dismissed.

3. After hearing both sides, I find that the duty demand against the appellants is justified in terms of the provisions of Rule 57AB (1C) of the Central Excise Rules, 1944 in view of the fact that the appellants after taking 50% credit on the impugned capital goods have removed the same to their sister unit. Hence the demand of duty with interest confirmed by the authorities below do not require any interference. However, considering the plea of the appellants with regard to penalty, I hold that in the facts and circumstances of this case, imposition of penalty is not warranted. Hence penalty imposed is set aside.

4. The appeal is thus partly allowed.

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