

Customs, Excise and Gold Tribunal - Calcutta

Tisco Ltd. vs Cce on 24 June, 2002

Equivalent citations: 2003 (85) ECC 290

Bench: A Wadhwa, A T V.K.

JUDGMENT Archana Wadhwa, Member (J)

1. Vide the impugned order, the authorities below have denied the benefit of modvat credit of Rs. 14,27,441.41 (Rupees fourteen lakhs twenty seven thousand four hundred forty one and forty one paise) to the appellants in respect to capital goods on the short ground that the proper declaration under the provisions of Rule 57T was not filed by them. Penalty of Rs. 10,000 (Rupees ten thousand only) has also been imposed on the appellants.

2. Dr. Samir Chakraborty, Ld. Advocate appearing for the appellants, submits that the issue is no more res-integra and has been decided by the Larger Bench decision in the case of Kamakhya Steels (P) Ltd. v. CCE, Meerut 2000 (40) RLT 575 (LB). He further draws our attention to the Board's Circular No. 441/7/99/CX. dated 23.2.99 issued by the Board which is to the effect that the minor procedural lapses in filing the declaration etc. for the purposes of modvat credit should be ignored by the Assistant Commissioner and the modvat credit should be allowed after ensuring that inputs/capital goods has suffered duty and have been used in the process of manufacture. This circular was considered by the Larger Bench of the Tribunal in the case referred (supra) and the matter was remanded for re-examination in the light of the Board's Circular and the amendment of Rule 57T vide which Sub-rule (13) was introduced. He also draws our attention to the another decision of the Tribunal to the similar effect reported in 2001 (44) RLT 279 (CEGAT-Del). It is also the grievance of the Ld. Advocate that the various grounds of appeals taken by them in their memo of appeal before Commissioner, have not been taken into consideration by the Appellate Authority. As such, the matter be remanded to the first Appellate Authority.

3. We have heard Shri A.K. Pandit, Ld. JDR who submits that filing of declaration is a statutory requirements and the appellants should not be allowed to avail credit without giving detailed and proper declaration.

4. After considering the submissions made by both the sides, we find that the issue involved is covered by the Larger Bench decision of the Tribunal as also by the Board's Circular which is to the effect that the Assistant Commissioner should allow the credit subject to the satisfaction of other requirements of duty paid character of the capital goods and their utilisation in the manufacture of the final product, Ignoring minor procedural lapses in filing the declaration etc. We also note that in the present case, the appellants had filed a declaration giving the description of the goods, which may not fully cover the exact description of the capital goods. Accordingly, we are of the view that the matter needs to go back to the original adjudicating authority for fresh examination In the light of the Board's Circular and the Larger Bench decision of the Tribunal. We set aside the Impugned order and remand the matter to the original adjudicating authority for de novo decision in the light of the observations made in the preceding paragraph. Appeal is thus allowed by way of remand.