(2003) 04 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No.2099 Of 1999 With C.A.Nos.3877-3881,6775-79, 6780-81 Of 1999, 2173-2176, 4010 Of 2001, 300-301, 2804, 4367, 5601, 8597-98 Of 2002

Commissioner of Central Excise — APPELLANT

Vs

West Coast Industrial Gases Ltd. — RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Citation : (2003) 155 ELT 11

Hon'ble Judges : M. B. Shah, J;Arun Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Being aggrieved and dissatisfied by the judgment and order dated 16th September, 1998 passed by the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the "CEGAT"), South Zonal Bench at Madras, the Revenue has preferred this appeal. The questions which require consideration are : -

(1) Whether or not the Modvat credit in respect of metal containers are required to be reversed, if the metal container or, packing material in which inputs was received is not used in or in relation to the manufacture of final product?

(2) Whether or not the duty is payable on the empty drums/containers in which calcium carbide is received by respondent and availed Modvat credit on the said input at the time of clearance from factory ?

2. On these aspects, the CEGAT relied upon an earlier judgment rendered in 1993 (48) ECR 1 58 in which the CEGAT, West Regional Bench at Mumbai negatived the contention of the Revenue that under the Modvat Rules, the assessee is required to pay duty on such drums or barrels, on pro-rata basis of Modvat credit availed of by the assessee, by holding that these drums/barrels could not be treated to be a waste arising out of processing of the inputs for

which credit has been taken. Rule 57F, in terms, provides for taxing of the waste arising out of manufacturing process. The drums/barrels cannot be terms as waste arising out of manufacturing process.

3. In our view, the said reasoning cannot be said to be, in any way, erroneous. There is no specific rule levying duty on such drums/barrels/ containers.

4. On this aspect, learned counsel for the assessee pointed out that the Government of India, Ministry of Finance (Department of Revenue), has specifically issued a circular dated 5th September, 1996, inter alia, stating as under :-

"2. The matter has been examined, container cannot be treated as inputs. Credit taken under Modvat is with reference to the duty on inputs and not on the containers, notwithstanding the fact that the value of the inputs may include the value of containers and the duty on the inputs may be on ad valorem basis. It is, therefore, clarified that no duty would be payable when such empty containers are cleared from the factory."

5. Thereafter, on the basis of the decision rendered by the CEGAT, a circular was issued on 23rd March, 1999, wherein it has also been observed as under :-

"2. The matter has been examined by the Board. In view of the above CEGAT judgment, it has been decided not to demand duty on waste packages/containers used for packaging modvat able inputs when cleared from the factory of the manufacturer availing of Modvat credit and to follow the CEGAT decisions."

6. It is true that after the issuance of the aforesaid circular as appeal was filed before this Court, the third circular was issued on 19th July, 1999 to the effect that as the Department has filed an appeal against the order of the CEGAT and as it is admitted by this Court, it has been decided by the Board to withdraw the Circular dated 23rd July, 1999. It appears that while issuing the circular dated 19th July, 1999, the concerned authority has not applied its mind to the ratio laid down by the CEGAT in OIL's case (supra) wherein it has been pointed out that there is no specific provision under the Rules considering such barrels/drums as a waste arising out of manufacturing process. In this view of the matter, this appeal is dismissed. There shall be no order as to costs. Civil Appeal Nos. 3877-3881, 6775-79, 6780-81/99, 2173-2176, 4010/ 2001, 300-301, 2804, 4367, 5601, 8597-98/2002 and 1421/2003 :

7. In view of the above order, these appeals are also dismissed. There shall be no order as to costs.