
(2015) 09 SC CK 0165

In the Supreme Court Of India

Case No : Civil Appeal No. 4749 of 2006

Commissioner of Central Excise, Pondicherry

APPELLANT

Vs

Honda Siel Power Products Ltd.

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

CENVAT (Credit) Rules, 2002 — Rule 11, 3

Citation : (2015) 52 GST 672

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : K. Radhakrishnan, Sr. Advocate, B. Sunita Rao, Anurag, Nisha Bagchi, Pooja Sharma and B. Krishna Prasad, Advocates, for the Appellant; M.P. Devanath, Vivek Sharma, S. Vasudevan, Hemant Bajaj, Anandh K., Aditya Bhattacharya, R. Ramchandran and L. Charanya,

Final Decision : Allowed

Judgement

1. The short question involved in the present case is as to whether the Respondent/Assessee is entitled to the benefit of Notification No. 10/02, dated 01.03.2002. As per this notification the concessional rates of duty on excisable goods of the description specified in column 3 of the table contained in the very said notification was payable. Goods manufactured by the Assessee are mentioned at serial No. 35. It included the goods falling under Chapter or Heading No. or Sub-heading No. 8413.11 to 84.13.14, 8413.20 or 84.13.91 which are water pump sets of certain specified categories/descriptions. Normal duty payable on these goods was 16%. However, those who qualified to be covered by the said notification were required to pay duty at a concessional rate of 4%. This notification stipulated two conditions which were to be fulfilled in order to avail the benefit of concessional duty which is clear from the following:

Subject to the following conditions namely:--

(i) No credit of the duty paid on

(a) inputs; or

(b) capital goods exclusively, used in the manufacture of these goods has been taken Under Rule 3 or Rule 11 of the CENVAT Credit Rules, 2002; and

(ii) the duty is paid in cash or through account current.

It is not in dispute that the Assessee fulfilled the first condition. The dispute pertains to second condition. The second condition mentioned above clearly spells out that to avail the benefit of this notification, duty was to be paid in cash or through account current. These are the only two modes of payment of duty which are specified. However, the Assessee cleared the goods through utilization of CENVAT Credit which is not the prescribed mode mentioned as per condition (ii). To put it otherwise, it is an admitted case that duty was neither paid in cash nor through account current as the duty was paid through CENVAT Credit Account and therefore the Assessee did not fulfill the second condition mentioned in the notification.

2. It is trite that exemption notifications are to be construed strictly and even if there is any doubt same is to be given in favour of the Department.

3. We find that the Tribunal has decided the case in favour of the Assessee by observing that clearing of goods with payment of excise duty with current account was only an error and the Assessee had not violated the more substantial condition viz, no CENVAT Credit should be taken in regard to the goods. This is clearly a faulty approach on the part of the Tribunal. It is stated at the cost of repetition that the Assessee was required to fulfill the condition in stricto sensu viz. to pay the duty either in cash or through account current if it wanted to avail the benefit of exemption notification and not through adjustment of CENVAT Credit which is not the mode prescribed in the aforesaid conditions. Once we find that the conditions have not been fulfilled the obvious consequence would be that the Assessee was not entitled to the benefit of this notification. However, in a case like this, the mistake, if any, was bona fide which would no doubt deprive the Assessee of the benefit of the exemption notification but it is not a case where any penalty or interest should be imposed. We, therefore, set aside the penalty as well as interest charged by the Revenue. We thus, set aside the order passed by the Tribunal. The appeal is allowed in the aforesaid terms.