(2012) 02 AP CK 0105

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 27 of 2012

Commr. of Cus. and C. Ex., Hyderabad-III — APPELLANT

Vs

Goldstone Teleservices Ltd. — RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Citation : (2012) 285 ELT 343

Hon'ble Judges : Madan B. Lokur, C.J;Sanjay Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Madan B. Lokur, C.J.—The Revenue is aggrieved by an order dated 16-11-2006 passed by the Customs, Excise and Service Tax Appellate Tribunal South Zonal Bench, Bangalore, in Appeal No. Excise/619/2006 [2007 (210) E.L.T. 157 (Tri.)]. The assessee assembles Cable Jointing Kits. According to the assessee, there is no manufacture of any excisable goods but nevertheless the Revenue insisted that the assessee pay central excise duty on the Cable Jointing Kits. Under compulsion, the assessee began paying central excise duty on the Cable Jointing Kits.

2. The assessee challenged the exibility of central excise duty and also claimed MODVAT credit on the inputs.

3. On the issue of exibility, the matter was settled by this Court and it was held that no manufacture was involved in the assembling of Cable Jointing Kits.

4. Under these circumstances, the assessee preferred a refund claim on the central excise duty that it was compelled to pay. The refund application was rejected by the Assistant Commissioner by his order dated 6-5-1998.

5. Feeling aggrieved, the assessee preferred an appeal and the Commissioner (Appeals) granted refund paid through the profit and loss account, but rejected refund of the amount paid out of the MODVAT credit account on the ground that

it was not admissible.

6. Feeling aggrieved, the assessee preferred an appeal which was disposed of in its favour by the Tribunal. In its Final Order No. 1183/2002 dated 6-9-2002 [2003 (151) E.L.T. 177 (Tri.)], the Tribunal concluded that denial of refund of the MODVAT credit claimed by the assessee could only be by initiating separate proceedings in this regard and it could not have been mixed up with the refund claim of the assessee. The Tribunal gave liberty to the Revenue to take such steps as were permissible in law to deny the availment of the MODVAT credit claim of the assessee.

7. Acting upon the liberty granted by the Tribunal, the Revenue issued a show cause notice to the assessee proposing to recover the MODVAT credit of Rs. 51,00,000/- utilized by the assessee towards payment of duty on inputs cleared. The Revenue also sought to deny the MODVAT credit claim of Rs. 1,91,00,000/- since it was intended to be utilized towards payment of duty on the final product. The assessee replied to the show cause notice, but the Revenue came to the conclusion that the recovery and denial of the MODVAT credit claim was justified. The assessee then preferred an appeal which came to be taken up by the Tribunal and that was allowed by the impugned order.

8. The Tribunal held that as regards the refund of duty paid through the MODVAT credit account, the assessee was compelled to avail the MODVAT credit in view of the stand taken by the Revenue that the Cable Jointing Kits were excisable goods. However, the amount of Rs. 1,91,00,000/- was not utilized by the assessee. As regards the amount of Rs. 51,00,000/-, it was held that while the assessee had utilized this amount, it was compelled to do so because of the attitude of the Revenue. The Tribunal also came to the conclusion that the proceedings for denial of refund of the MODVAT credit by reversal of the entries in the profit and loss account is a separate issue altogether and necessary steps ought to have been taken by the Revenue in this regard.

9. In our opinion, the view taken by the Tribunal is unexceptionable. Rule 57C of the Central Excise Rules, which is relevant for the present purposes, deals with credit of duty not to be allowed if the final products are exempt. Sub-rule (2) thereof provides that where a manufacturer avails credit of the specified duty on any inputs and he is engaged in the manufacture of any final product which is chargeable to duty, then the provisions of sub-rule (1) shall be deemed to be satisfied only if certain conditions are fulfilled.

10. In the present case, admittedly the assessee is not a manufacturer of goods inasmuch as it has been held by this Court that the assessee was only assembling Cable Jointing Kits and was not engaged in manufacture. Therefore, availment of MODVAT credit at the relevant time was justified insofar as the assessee is concerned since it was compelled to pay central excise duty on Cable Jointing Kits. Whether the assessee would be entitled to claim a benefit on a future date or avail it from a future date does not arise for consideration. All that

can be said is that at the relevant time, the assessee did not act in an illegal manner and for this reason the action taken under the show cause notice issued to the assessee was not justified. In our opinion, no substantial question of law arises for consideration. There is no merit in this appeal. Dismissed.

