Collector of C. Ex. Vs. Universal Cables Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-03-1997

Reported in : (1997)(94)ELT185TriDel

Appellant : Collector of C. Ex.

Respondent : Universal Cables Ltd.

Judgement :

1. By the captioned appeal the Ld. Commissioner of Central Excise has assailed the order of the Ld. Collector (Appeals). The Ld. Collector (Appeals) in his order had held that Rule 57E provides that the credit allowed should be varied by adjustment in RG 23 if the duty paid on any inputs in respect of which credit has been allowed under Rule 57A is varied, subsequently, due to any reason resulting in payment of refund to the manufacturer or importer, the Ld. Collector, therefore, set aside the impugned order dis-allowing the credit. He also set aside the order imposing the penalty.

2. The facts of the case are that the respondents are engaged in the manufacture of insulated wires and cables. For insulating the wires and cables they used PVC compound. On examining the standard of PVC compound the appellants found that it was not in accordance with the specifications required for the purpose and, therefore, issued debit notes to the suppliers of PVC compound. The Department alleged that since the appellants have issued debit notes resulting in reduction of value of PVC compound which consequently will reduce the quantum of duty also, therefore, the appellants should not be allowed credit of duty on that part of the

assessable value for which debit notes have been issued. The appellants submitted that they had paid higher duty in accordance with the duty paying documents and had taken credit on that account only. It was also contended before lower authorities that since no refund of duty has been claimed by the manufacturer of the inputs there was no question of variation of the credit taken under Rule 57A read with Rule 57E of the Central Excise Rules. Whereas the Assistant Collector confirmed the demand in appeal the Ld. Collector (Appeals) allowed the appeal of the respondents herein holding that there cannot be any variation in the credit taken unless the refund is claimed by the manufacturer of the inputs and the same is sanctioned by the Central Excise authorities. After careful consideration of the submissions made the Ld. Collector (Appeals) allowed the appeal of the respondents.

3. Arguing the appeal Shri Jangir Singh, Ld. JDR submits that the issue of debit notes necessarily decreases the assessable value of the product. He submits that when the assessable value is decreased the duty also gets decreased and since the admissible value of the goods on which Modvat credit has been taken is reduced the respondents herein will not be entitled to take credit of duty attributable to the decreased assessable value of PVC compound. He submits that in this view of the matter the Assistant Collector rightly confirmed the demand and prays that the impugned order may be set aside.

4. Ms. Malini Sud, Ld. counsel appearing for the respondents submits that on identical facts this Tribunal in the case of the same assessee had held that there cannot be any variation of the credit taken inasmuch as a plain reading of Rule 57A would show that the assessee is entitled to take Modvat credit of duty paid by the manufacturer on the inputs and not the duty which the manufacturer would be required to pay if any. The Tribunal further held that in the instant case as the quantum of duty availed by the appellants is equivalent to the amount of duty paid by the manufacturer we hold that the same has been correctly availed by the appellants and the same is not to be disturbed at the appellants end unless a refund is sanctioned to the manufacturer.

5. We also note that variation of duty taken as credit is covered by the provisions of Rule 57E. Variations of a credit depends on the variation of duty in respect of duty paid by the manufacturers of the inputs. In the instant case no duty debit notes were issued by the manufacturer on the final products nor issue of these debit notes have affected the quantum of duty already paid by the manufacturer of the inputs and since there is no change in the duty paid by_ the manufacturer of the inputs, there is no question of variation of Modvat credit taken in terms of Rule 57E read with Rule 57A. Following the ratio of the decision of this Tribunal the Ld. counsel submitted that their case was fully covered by the decision.

6. Heard the submissions. We find that the facts in the instant case are identical to those dealt with by the Tribunal in the case cited and relied upon by the respondents herein. Following the ratio of that decision we hold that credit of duty taken by the respondents herein cannot be varied. In this view of the matter the impugned order is upheld and the appeal is rejected.