Jhalani Tools (i) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-1997

Reported in : (1997)(95)ELT105TriDel

Appellant : Jhalani Tools (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This is a stay application filed with reference to the order-in-appeal dated 22-12-1995 passed by Commissioner (Appeals), New Delhi.

2. Learned counsel stated that in this case, the appellants are engaged in the manufacture of hand tools and they had filed a Modvat declaration under Rule 57G for F.T. Sheetings etc. which were used by them as packing material.

3. They were availing benefit on this basis when subsequently, in addition to F.T. Sheetings, the supplier also supplied them the material in the form of rolls, pouches, vallets etc. and therefore, their Chapter Heading changed. Hence, they addressed another letter to the A.C., Sonepat dated 18-5-1994 informing the A.C. of the said development and subsequently, as advised, filed a formal declaration dated 30-5-1994.

4. The authorities below have, however, disallowed the Modvat credit taken from December, 1993 to April, 1994 on the ground that they had filed no declaration regarding F.T. Rolls to cover the aforesaid period and the benefit could therefore,

be availed only from the date they filed the new declaration.

5. It was their contention that the appellants were under the impression that their original declaration filed on 30-4-1987 continued to cover the items because the basic material was the same and only it was being supplied during the relevant period in different forms; and as soon as they became aware that the heading has changed, they had informed the A.C. That apart, in any case, the A.C. had power of condoning the delay in filing the declaration.

6. There is no dispute that the duty-paid material was duly received and utilised for the declared final product. It was, therefore, her contention that it was not a case of non-filing of declaration but even if the Department's case is accepted, it is a case of only delay in filing the declaration which was condonable.

7. That apart, the unit is a sick unit and the Government of Haryana had extended the relief for rehabilitation of the sick units in the light of the decision of the High Powered State Level Committee as evident from a copy of the letter addressed by the Chief Electrical Inspector to the Executive Engineer, HSEB, Sonepat dated 16-2-1993 which is produced herewith. This letter shows that the State Government had granted exemption for a period of four years.

8. It was, therefore, her contention that they are in a serious financial difficulties and the payment of the amount would cause undue hardship and in any case, there was no cause for imposition of penalty.

9. Learned DR opposed the prayer. He drew attention to the order of the adjudicating authority and the finding to the effect that F.T.Sheetings were cotton coated fabrics classifiable under different heading than F.T. Rolls etc. which were different articles in the nature of made-up articles. Whereas the party had declared only F.T.Sheetings in their original declaration, no declaration had been filed in regard to rolls, pouches, vallets etc. to cover the relevant period.

Hence, the Department is justified in demanding the amount which had been wrongly availed and imposing penalty.

10. I have considered the above submissions. The appellants had initially given a declaration about F.T. Sheetings and subsequently filed a declaration about F.T. pouches, rolls, etc. also and the question as to whether such delay was condonable and if so, to what extent and for what period will also be required to be considered.

11. I observe that while the case is arguable on merits, the learned counsel has been able to show that the appellants' unit was a sick unit.

12. Looking to the totality of facts and circumstances and financial position, I grant waiver of pre-deposit of the amount in question (including duty and penalty) subject to the appellants depositing Rs. 20,000/- (Rupees twenty thousand only) within eight weeks from receipt of this order failing which their appeal will be liable to be dismissed without further notice. The appellants will be at liberty to pay the amount by adjustment in PLA/RG 23 Part II. To come up for reporting compliance on 22nd July, 1997.