Commissioner of Central Excise Vs. Amar Dye-chem Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-27-1997

Reported in : (1998)(99)ELT262Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Amar Dye-chem Ltd.

Advocate for Def. : Shri. Prakash Shah

Judgement :

1. The respondents are manufacturing S.O. Dyes falling under old Tariff Item 14 of the Central Excise Tariff. They claimed exemption under Notification 103/61 which allows set-off of duty paid on the imported intermediates used in the manufacture of S.O. Dyes.

2. The jurisdictional Asstt. Commissioner held that they were not eligible for the exemption and the issue was finally settled by an order dated 6-2-1987 passed by the Commissioner, Central Excise, Mumbai, wherein he held that the respondents will be eligible for the exemption, if otherwise admissible. Thereafter, the Asstt. Commissioner passed an order on 3-1-1991 in which he held that credit of duty in balance cannot be carried forward and hence denied the respondents permission to transfer the balance of credit of Rs. 20,88,694.47 accumulated in terms of Notification 103/61 as inadmissible. The Asstt.

Commissioner held that when once the notification is rescinded which was with effect from 15-10-1984, whatever credit in balance should lapse and it cannot be permitted to be transferred to Modvat credit account under the transitional provision for Modvat rule in Rule 57H, Central Excise Rule. This was because such transition facility will be granted only to the balance of credit lying in balance immediately prior to the commencement of Modvat scheme whereas in this case the Notification 103/61 having been rescinded on 15-10- 1984 the balance of credit cannot be considered as lying in balance immediately prior to Modvat Scheme. This order of the Asstt. Commissioner was challenged before the Commissioner (Appeals) who passed the present impugned order against which the Commissioner, Central Excise, Mumbai-III is in appeal. The Commissioner (Appeals) observed that the question for determination whether the accumulated credit of set-off allowed under Notification 103/61 can be transferred to Modvat account under Rule 57H(3) or not. He held that the credit earned under the notification does not lapse when it is rescinded. He relied upon the Tribunal decision in M/s. Sandoz (India) Ltd. v. Collector - 1990 (50) E.L.T.403 in which the same Notification 103/61 was considered by the Tribunal. The Tribunal held that if the amount of set-off is finally held to be allowable, it has to be granted by transferring the balance under provision of Rule 57H(3).

3. Shri S.V. Singh Id. DR presented the case for the revenue and contended that the Commissioner (Appeals) was in error to have allowed transfer of the credit balance to the Modvat credit account. He relied upon the Tribunal decision in the case of A.C.C v. Collector - 1992 (58) E.L.T. 313 wherein the Tribunal held when the Notification 201/79 was rescinded the exemption granted thereunder would no longer be available when the credit was not immediately available before March, 1987 when the declaration for Modvat was filed. Shri Prakash Shah ld.Counsel for the respondent argued that the case law relied upon by the Commissioner (Appeals) fully covers their situation. The ld. Counsel also cited the Tribunal decision Commissioner v. Andhra Pradesh Paper Mills Ltd. - 1997 (92) E.L.T. 256 (Tribunal), wherein the Tribunal held that if the transitional facility was held not applicable under Rule 57H, then the department will consider the grant of refund in cash. The Tribunal in giving such a direction follow another decision of the Tribunal reported in MRF v. Collector - 1990 (50) E.L.T. 546 (Tribunal). The ld.

Counsel further relied upon another decision of the Tribunal in its Order No. 351/97-D, dated 1-5-1997 in the case of Raymond Woollen Mills Ltd. v. Collector [1997 (95) E.L.T, 108 (Tribunal)] where the Tribunal held that the credit balance available on the rescinding of the Notification 201 /79 cannot be wiped out. The Tribunal relied upon Madras High Court decision Madras Vanaspathi v.Union of India -1992 (61) E.L.T. 6, wherein the High Court held that right to utilise the credit received under notification does not cease on the notification being rescinded. The same views are expressed by the Supreme Court in C.B.E.C. v. Shriram Foods & Fertilizer Industries -1993 (67) E.L.T. A47. The ld. Counsel also pointed out that the jurisdictional Asstt. Commissioner himself in his letter dated 21-3-1986 informed the respondent that transfer of the credit lying under Notification 103/61 would be permitted after the issue is resolved by the Court. The issue was resolved ultimately by the order of the Commissioner (Appeals) referred to above in favour of the respondent. In such a situation, when the matter was in dispute, and when the respondents were already operating under Modvat scheme by the time the dispute was resolved, the transfer of the credit balance under Rule 57H ought to have been allowed. The ld. Counsel pointed out the factual situation in the A.C.C. case (supra) was not similar.

4. We have carefully considered the submissions. We find that the department's view that the transfer of the credit balance earned under Notification 103/61 is not possible under Rule 57H cannot be accepted.

The fact remains that the respondent herein had opted for Modvat credit soon after its promulgation in 1986 itself. During that period their claim for set-off of duty under Notification 103/61 was in dispute which was resolved only by the Commissioner (Appeals) order dated 6-2-1987. Therefore, they could have asked for the transition facility under Rule 57H only thereafter, as they could not have made this application when the matter was still in dispute. They also could not have utilised set-off in terms of Notification 103/61 as it stood rescinded by that time. They could have utilised the credit balance had the department allowed the benefit of Notification to them at the material time. Since in the circumstances of the case, there was a dispute which came to be finally resolved only on 6-2-1987, the set-off of duty prior to the opting for the Modvat scheme by the respondent has to be construed to be lying in balance mediately before filing of the declaration. This view is supported by the decision of this Bench in India Electricals Engg. v. Collector -1995 (78) E.L.T. 72. It has already been noted that in Raymond Woollen Mills' case (supra) that Tribunal following a Madras High Court judgment has held that the credit earned under the earlier notification does not lapse when it is rescinded. In such a context, the reliance placed under the Commissioner (Appeals) in the Sandoz' case (supra) in the impugned order is also well-founded where the Tribunal held that the credit balance in the rescinded notification should be given either as refund or by transfer under the Rule 57H(3) Central Excise Rules. The facts of the A.C.C. case (supra) relied upon by the department were different.

In that case, there was no dispute dealing the application for transfer as the item itself was not included in notification under the Modvat Scheme till 1987 when the assessee opted to work under that scheme. In this view of the matter, we do not see any reason to interfere with the order passed by Commissioner (Appeals) which is upheld and the appeal is rejected.