

Max India Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-16-1997

Reported in : (1999)(112)ELT529TriDel

Appellant : Max India Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. The captioned seven appeals arise out of two orders. Three Appeals (E/1152-1154/93), have been filed by the Assessee, against denying them the benefit of Modvat credit on the waste material holding that the benefit extended by Rule 57D of the Rules would not be available to the assessee on granules obtained on recycling of waste, inasmuch as granules are by themselves the finished product and cannot be termed as waste to attract the provisions of Rule 57D. Three Appeals (Nos.

E/1360-1362/93) have been filed by the Department against the same impugned order on the ground that the Appellate Authority has not properly interpreted the spirit of Rule 57D of Central Excise Rules, 1944 inasmuch as she has held only that part of the credit of duty not the inputs which were used in the manufacture of waste which as recycled for the manufacture of the granules will be disallowed. It has also been prayed that Rule 57D was not attracted and that Rules 57D and 57F (as it then was) should be read together and should not be read in isolation. The Appeal No. 1598/95-NB has been filed by the Assessee against the finding that the assessee is not entitled to Modvat credit on the ground that wastage is very

high and also that granules obtained after recycling of waste are not waste and hence Modvat credit of inputs contained in plastic granules obtained after recycling of waste will not be covered by Rule 57D.2. Since the issue in the above mentioned 7 appeals is same, they were heard together and are being disposed of by this common order.

3. Shri A.N. Haksar, the Id. Sr. Advocate along with Shri Ajay K.Dutta, Advocate appeared for the Assesseees whereas Shri P.K. Jain, the Id. SDR appeared for the Revenue.

4. The Id. Sr. Advocate arguing for the Assesseees submits that the assesseees are engaged in the manufacture of BOPP films. They are availing credit of duty paid by them on various inputs under the Modvat scheme; that these inputs were being used by them in or in relation to the manufacture of the final finished product. The Department alleged that the percentage of waste arising in the course of processing of the inputs was abnormally high. It was also alleged that part of the said waste was recycled by the Assessee and plastic granules were manufactured; that the granules as a result of the recycling of the said waste were cleared by the Assessee without payment of duty even though full credit under the aforesaid Chapter V of the Rules was taken by the Assesseees even in respect of the inputs, which had been used in the manufacture of waste recycled into granules and also cleared as waste. The Collector (Appeals) held that the credit on the inputs contained in the waste arising during the manufacture of BOPP film is covered by Rule 57D irrespective of the quantum of waste which may arise. Against this finding, the Revenue has come up in appeal whereas the Assessee has filed the appeal on the finding that 'however, polypropylene granules are a finished product. Waste which is used in the manufacture of polypropylene granules and which have been cleared at NIL rate of duty on that portion of the waste, the Assesseees are not entitled to claiming Modvat. Against this, the Assessee has come up in appeal.

5. Arguing for the Assessee, the Id. Sr. Advocate submitted that their case was fully covered by the decision of this Tribunal in their own case reported in 1994 (72) E.L.T. 483; that in this case, the Tribunal held that: "4. It is relevant to note

that in the present appeals, the final product of BOPP films which are admittedly chargeable to excise duty. The lower appellate authority has gone into the question of denial of Modvat credit by the Asstt. Collector only on the ground of high percentage of wastage and she has also recorded her finding that the adjudicating authority has not taken into account whether the high wastage could result nor has he relied upon the report from his field office which could clarify as to whether the wastage was really high or otherwise. Further, she has held that the departmental authorities were aware of the fact that waste arises during the course of manufacture of BOPP films as they were visiting the factory of the assesseees and inspecting and verifying the percentage of wastage from time to time from the statutory registers. No satisfactory or convincing argument has been put forth by the DR to dislodge this finding of the Collector (Appeals).

Further we find that the assesseees had, in their appeal before the Collector (Appeals), stated that their factory was set up in 1989 and commercial production of BOPP films commenced in March, 1989 and during the first few months of commencement of production, the percentage of waste and scrap was high due to initial setting up problems and frequent power trippings and this has not been controverted by the Department. In the light of the fact that the final product is BOPP films which is cleared on payment of duty (and not granules), we hold that credit of inputs contained in waste arising during the manufacture of BOPP films is covered by Rule 57D irrespective of the quantum of waste. We uphold the impugned order and reject the appeals of the Revenue." 6. The Id. Sr. Advocate submitted that the Hon'ble Vice President, while recording his own decision, observed that 'since in the instant case, the waste material is being admittedly utilised for recycling and production of granules as well, therefore, the extent to which it is being so utilised is also required to be kept in mind.' The Id. Counsel submitted that even at that time while deciding the issue, the Tribunal was aware that a part of the waste was being recycled into granules and the granules were being partly used further in the manufacture of BOPP film and some times were being cleared at NIL rate of duty. The Id. Counsel, therefore, submitted that this fact was known to the Tribunal and that the Tribunal, by a majority judgment, had held that credit of inputs contained in waste arising during the manufacture of BOPP films is covered by Rule 57D irrespective of the quantum of waste, and,

therefore, they upheld the impugned order and rejected the appeals of the Revenue.

7. The Id. Senior Advocate submitted that this decision of the Tribunal was followed in further decisions of this Tribunal in the case of the Assessee themselves, reported in Order Nos. A/1779-80/96-NB, dated 8-7-1996 and in Order No. A/1891/96-NB, dated 12-7-1996. He submitted that the ratio of this decision fully covers their case. The Id. Counsel submitted that in Appeal No. E/1598/95-NB, the Id. Collector did not follow the order of the Tribunal, holding that the minority judgment held otherwise.

8. The Id. Counsel submitted that during the material period, there was a Notification No. 53/88; that in this Notification, wastage of plastic was covered by Sl. No. 24, whereas recycled granules were by Sl. No. 41 of this Notification and that wastage as well as recycled waste into granules were exempted. The Id. Counsel submitted that since the decision of this Tribunal squarely covers the circumstances in their case fully and, therefore, prayed that the appeals may be allowed.

9. Shri P.K. Jain, the Id. SDR appearing for the Revenue, submits that waste arising in the process of manufacture of the final product is covered by Rule 57D & 57F (as it then was). He submitted that these two rules cannot be read in isolation and should be read together for harmonious connection thereof. He submitted that Rule 57F(4) clearly stipulates as to how the wastage of inputs should be dealt with on which credit has been utilised. He refers to Sub-rule (4) of Rule 57F and submits that this sub-rule provides for disposing of the waste arising from the processing of inputs in respect of which credit has been taken. He submits that in the instant case, the waste has a market, has a recovery value and is not just waste, refuse and does not have any commercial value. He submits that waste was exempt under Item No. 24 of Notification No. 53/88 and since waste of plastic was exempt, therefore, it will be covered by Rule 57C and, therefore, on the entire waste in the instant case, the credit of duty taken on the inputs contained in this waste shall have to be reversed. For his contention that waste is covered by Rule 57F(4) of Central Excise Rules, 1944, the Id. SDR cited and relied upon the

judgments in the case of Jay Engineering Works Ltd. [reported in 1993 (65) E.L.T 456] and in the case of Shri Ram Refrigeration Ltd. [reported in 1993 (67) E.L.T. 189].

10. In his rejoinder, the Id. Sr. Advocate for the Assessee submitted that in the instant case, waste plastic was exempt and, therefore, it was fully covered by Rule 57D(1). He submitted that since this was exempt under the Notification No. 53/88, therefore, it was not covered by Rule 57F(4) inasmuch as Rule 57F(4) shall be applicable only in respect of waste which is dutiable. Referring to the words used in Rule 57D, the Id. Counsel submitted that the words used in this Rule are "shall not be denied", whereas the word used in Rule 57F(4) is "may".

The Id. Counsel submitted that from the readings of these two rules, it is very clear that for the waste exempted, Rule 57D(1) is relevant whereas for the waste on which duty is required to be paid, Rule 57F(4) is relevant.

11. The Id. Sr. Advocate submitted that insofar as recycling of the waste into granules is concerned, the point was taken up by the Hon'ble Vice President in his judgement/in their own case and, therefore, the case must be accepted as settled in their favour. The Id. Counsel, therefore, submitted that in view of the above findings of the Tribunal and the submissions made by him, the Appeals of the Assessee may be allowed.

12. Heard the submissions of both sides. On careful consideration of the submissions made as also on perusal of the relevant Rules and the case law cited and relied upon by both sides, we observe that the relevant Rules are 57D(1) and 57F(4). We note that Rule 57D(1) provides that no credit of duty shall be denied or varied on the ground that part of the inputs contained in any waste, refuse or by-product arising during the manufacture of the final product. Whether or not such waste, refuse or by-product is exempt from the payment of duty of excise, leviable thereon or is chargeable to NIL rate of duty or is not specified as a final product under Rule 57A. Here, in the instant case, we find that the waste that arose in the manufacture of BOPP films is partly cleared as waste under Notification No. 53/88. A part of this waste is recycled into granules and granules are partly used in the manufacture of BOPP films and partly cleared as granules

again as exempt item under Notification No. 53/88. Coming to the issue in the present case, we note that waste for the purposes of Rule 57D(1) is only that waste which is cleared as waste and this waste will not include the waste which is recycled into granules and part of the granules are cleared on payment of duty. Thus, granules obtained by recycling the waste are put to two uses. A part of these granules are reused for manufacture of BOPP films and part of these granules are cleared without payment of duty as exempted goods under Notification No. 53/88. As part of the granules are re-used for manufacture of BOPP film, the question of reversal of Modvat credit does not arise inasmuch as no Modvat credit was taken on the granules obtained after recycling of waste. Therefore, the limited issue is what happens to the granules obtained from recycled waste which are again cleared as exempted goods under Notification No. 53/88. The Argument of the Assessee was that this aspect was looked into by the Tribunal in their own case inasmuch as the Hon'ble Vice President, writing has separate order, had brought out that part of the waste was recycled into granules and granules were cleared partly as exempt under Notification No. 53/88. We have perused the Hon'ble Vice President's order also. We find that the Hon'ble Vice President has observed as above, but at the same time directed remand for further examination. But, such remand was not permitted and thus the observations remain only observations and cannot be acted upon as a precedent.

13. Having regard to the above discussions, findings and the case law and the submissions made before us, we hold that the question of reversal of Modvat credit on the wastage cleared as waste is fully covered by the provisions of Rule 57D(1) and hence the question of reversal does not arise.

14. We also hold that granules obtained after recycling of the plastic waste which are used for further manufacture of BOPP films did not warrant reversal of Modvat credit in as much as they are used for further manufacture of BOPP films.

15. The only point that remains, therefore, is reversal of the Modvat credit on the input contained in the recycled granules and cleared under Notification No. 53/88. We hold that these granules are not waste and are not covered by provisions of Rule 57D(1). Therefore, duty taken as credit on inputs contained in these granules

obtained after recycling of plastic waste, which are cleared under Notification No.53/88, shall have to be reversed.

16. The impugned orders are, therefore, modified to the extent stated above and the seven appeals are disposed of accordingly.

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