

**Raymonds Ltd. Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Nov-28-1997

**Reported in :** (1998)(99)ELT545Tri(Mum.)bai

**Appellant :** Raymonds Ltd.

**Respondent :** Commissioner of Central Excise

**Judgement :**

2. In the order impugned in the appeal.. Commissioner has disallowed Modvat credit taken under Rule 57 A for various reasons. He has also imposed a penalty under Rule 173Q.3. An amount of Rs. 12.43 lakhs has been denied on the ground that, in its declaration dated 1st March, 1994 the appellant did not declare as an input synthetic and polyester tops and tows on which it took credit and that it only declared synthetic and polyester fibres. In the declaration dated 15-3-1994 the appellant had declared synthetic fibre of Headings 5501.10 and 5501.20. The headings read "Synthetic staple fibre and tows including tops thereof." Each of the sub-headings refers to the origin of these goods e.g. Polyester etc. We are, therefore, inclined to accept the contention of the appellant that in the context of the heading there was in effect no distinction between tow and fibre, and particularly in view of the fact that all three products, fibre, tow and tops would be classifiable under the same sub-heading (based upon the origin) and that there has been substantial compliance so far as these products are concerned.

4. Credit has been disallowed on the duty paid on five consignments of wool tops, for the reason that they were not declared as input.

Advocate for the appellant admits that wool tops were not declared in any manner in this declaration and says that during the period wool tops were not received by the appellant, except in two cases where emergency required it to procure wool tops from outside. Hence he says failure to declare the goods was not intentional and not with an intent to wrongly take credit. Sub-rule 5 of the Rule 57G empowers the Assistant Collector to condone the delay in filing the declaration by a manufacturer, where he was not in a position to make a declaration. In the facts of this case we are satisfied that application of the Sub-rule is justified. There was only two instances of receipt of such goods and the appellant had nothing to gain by not declaring them.

Considering this, and the extent of delay involved the declarations made on 5 and 8-2-1996 for the goods received in September and December, 1995 may be accepted.

5. Credit has been disallowed for various goods in respect of which the Commissioner found that the description in the invoices did not tally the description in the declarations filed under Rule 57G. It is the appellant's contention that various descriptions in the Modvat declarations were in generic names such as lubricating oil etc; the products were described in the invoices under which they were received by their brand or trade names and that therefore, the goods are already covered by the declarations made. It is further contended that the goods were described by specific brand names in the declaration made on 5th and 8th February, 1996.

6. If it can be shown that the goods received actually have been declared in the generic name, the fact that the invoices described item by their brand names and not their generic name cannot come in the way of credit being taken. Advocate for the appellant stated he was able to establish before the Assistant Collector by means of evidence that the goods declared in the invoices were covered by the declarations. We, therefore, consider it appropriate that this matter should be verified by the Assistant Commissioner. If it is shown to the satisfaction of the goods received fall within the category of the generic description in the declarations already file, credit refused merely on the ground that the invoices did

not mention the generic name but only the brand name.

7. Credit of Rs. 1 lakh approximately has been denied on the ground that the applicant availed of the credit beyond 6 months from the date of receipt of the inputs. Appellant contends that the inputs were received in January, 1995 and credit was actually taken immediately after receipt of the goods but then it was wrongly entered in the RG 23C account, which is for Modvat credit on capital goods instead of RG 23A account and that when it came to know of the mistake it struck it out the entry in RG 23L [RG 23C] and proper entry was made in RG 23A on 1-10-1995. If this is the case credit cannot be denied only for the reason that it was entered in a wrong account. Advocate for the appellant stated that he would be able to demonstrate the correctness of the contention by producing the relevant books of account invoices etc. before the Asstt. Commissioner.

8. We, therefore, allow the appeal and set aside the order impugned. So far as the credit of duty paid on wool tops is concerned we find in favour of the appellant. As regards the other items the Assistant Commissioner shall after hearing the appellant and considering the material placed before him, decide on the eligibility of the inputs stated to have been declared. He should also decide on the eligibility of credit of Rs. 1 lakh approx. and allow such credit if the appellant satisfies him that the credit in fact was taken but entered wrongly into the capital goods account.

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