Deepak Nitrite Ltd. Vs. Collector of Cus. and C. Ex.

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SooperKanoon Citation : sooperkanoon.com/12514

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-31-1997

Reported in : (1999)(105)ELT49Tri(Mum.)bai

Appellant : Deepak Nitrite Ltd.

Respondent : Collector of Cus. and C. Ex.

Judgement :

1. In this case proceedings were initiated against the Appellants for denying Modvat credit of Rs. 4,31,360/- on the ground that it has been wrongly availed of on the total quantity of ammonia used in the manufacture of Nitric Acid during the period April 1986 to August 1986 under Rule 57-I of Central Excise Rules. The Department's case is that the Appellants manufacture Nitric Acid. It was alleged that the Appellants have taken credit on the input ammonia used in the manufacture of Nitric Acid which is assessed to 'nil' rate of duty and this Nitric Acid is ultimately used in the manufacture of their final products Ammonium Nitrate. It was, alleged that as per Rule 57D of the Central Excise Rules the credit allowed on any input need not be denied on the ground that an intermediate product has come into existence during the course of manufacture of the final product and that such intermediate product is for the time being exempt from the whole of the duty of excise leviable thereon. But the Department held in the present case that Rule 57D had not been revoked by the Appellants as the intermediate product namely Nitric Acid is not exempt from the whole of duty of excise but is assessed through 'nil' rate of duty. The order of the Additional Commissioner of Central Excise,

Vadodara denied Modvat credit on this ground is now under challenge.

2. After hearing Shri J.S. Bhatt, the ld. Consultant for the Appellants and the ld. SDR Shri V.K. Puri, we find that the denial of Modvat credit under Rule 57D in this case has been taken on a technical and narrow ground because we find that subsequently the Rule itself was amended to specifically include the intermediate goods chargeable to 'nil' rate of duty also. The earlier Rule covered only intermediate products exempt from the whole of duty. Because of this and also because of the decision about the intermediate products which came up for the consideration of the Larger Bench of the Tribunal in the Machine Builders v. Collector's case 1996 (83) E.L.T. 576 we are of the view that the impugned order is to be set aside. We find that the Larger Bench has held in the context of deemed credit, in that decision that the word "charged to nil rate of duty" would in the Modvat credit context would mean no duty is actually charged by the Revenue, that is, not charged to any duty. In these circumstances the impugned order is set aside. The appeal is allowed.