

Commissioner of C. Ex. and Cus. Vs. Prime Plast Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-12-1998

Reported in : (1999)(112)ELT337Tri(Mum.)bai

Appellant : Commissioner of C. Ex. and Cus.

Respondent : Prime Plast Pvt. Ltd.

Judgement :

1. The Commissioner of Central Excise, Aurangabad has filed this appeal against the impugned order of the Commissioner of Central Excise (Appeals), Pune captioned above. The Respondents manufacture plastic films and were availing Modvat credit. In the course of manufacture plastic waste and scrap is generated and they were granted exemption under Notification 53/88 for clearance of this scrap which was removed at 'nil' rate of duty. Show cause notice were issued to the Respondents as to why the Modvat credit in respect of duty paid input contained in waste should not be recovered from them on the ground that such input duty credit is not available where the final product is exempted in terms of Rule 57C. The demand was confirmed and in the appeal filed against the Assistant Commissioner's order the Commissioner (Appeals) relied upon a decision of the Tribunal in the case of Anil Starch Products Ltd. -1990 (40) E.L.T. 525 and held that Plastic waste does not constitute final product and therefore Rule 57C is not applicable.

2. The Id. DR Shri S.V. Singh submitted that the waste of plastic in this case have been cleared at 'nil' rate of duty under exemption Notification 53/88 and as such

the provisions of Rule 57C are clearly attracted. Therefore proportionate credit of duty availed in respect of input contained in the waste has to be reversed.

3. However, we find on consideration of the submission that the reliance placed by the Commissioner (Appeals) in the Tribunal decision in the case of Anil Starch Products (supra) is well founded. In that case also the department sought to reverse the duty on the Mother Liquor which was drawn on and there was the emergence of Hydrol which was not chargeable to duty. The department's case was, that portion of the Modvat credit contained in the Hydrol which is subject to 'nil' rate of duty should be reversed. The Tribunal held that Hydrol was only a bye-product and it was not the final product declared by the assessee. In such a situation Rule 57C will not be attracted. We also find that in another case when the department sought to recover proportionate credit of duty on Sulphur Acid used in the manufacture of Hydrol the Tribunal took the similar view and held that the Sulphur Acid has considered as a bye-product and the credit of duty on input contained therein will be protected by the provisions of Rule 57D.4. The facts of the present case are similar and the Commissioner (Appeals) has correctly applied the ratio of the Tribunal decision.

Accordingly we see no reason to disturb the impugned order. The appeal is rejected.

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