

Commissioner of C. Ex. Vs. Rainbow Instruments Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-11-1998

Reported in : (1999)(112)ELT869Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Rainbow Instruments Pvt. Ltd.

Judgement :

1. The assessee, in its declaration dated 10th March, 1986 filed under Rule 57G, declared permanent magnets classifiable under Heading 85.05 as an input for use in or in relation to the manufacture of the finished product. Department subsequently noticed that the goods which were received were not magnets but articles intended to become permanent magnets. Notice was therefore issued alleging as an undeclared input taking of credit. The Assistant Collector, in his order, confirmed the proposal in the notice and ordered recovery of the amount.

2. In appeal from this order, Collector (Appeals) accepted the contention of the appellant before him that gate passes, invoices and bills of entry produced showed that the product has been declared as permanent magnets and that credit has been taken for five years. He noted that chapter heading had been correctly declared and that there are instructions to say that credit should not be denied on account of minor variation and he concluded that there has been substantial compliance with the requirement of Rule 57G. He therefore allowed the appeal. Hence the appeal by the Department.

3. The Departmental Representative says that the contention in the appeal that what was declared was permanent magnet and what was received was articles intended to become permanent magnet. He says that the tariff and the HSN Explanatory notes indicate that the two products are separate the distinct and that there was no basis to show that the two are considered the same product in the trade. He cites decisions in support. He contends that where the inputs are not specifically declared, the condition precedent for taking credit is not satisfied.

4. Advocate for the respondent emphasises the grounds which were adopted before the Collector (Appeals). He further lays emphasise on the fact that the declaration was made in the earlier days of Modvat.

5. I am unable to accept the contention that permanent magnet and the articles intended to become permanent magnet are the same. The relevant Tariff Heading 8502 reads "Permanent magnet and articles intended to become permanent magnet after magnetisation." The terms of the heading themselves make it clear that permanent magnets are distinct from articles which are intended to become permanent magnet. Thus the tariff itself make a clear distinction between the two products. The fact that goods would ultimately become magnets cannot advise this distinction.

6. However, there are other aspects to be considered. While there is a clear distinction between permanent magnet and articles which are intended to become permanent magnet, the distinction is a true one by being subjected to process of manufacture the goods do not change the physical form or chemical structure. It has to be noted that the tariff heading itself groups both the articles together in one clause. The assessee therefore could genuinely have been under the impression that there are no difference between the two. This is particularly so, since the declaration was made in March, 1986 immediately after the Mod-vat procedure was introduced. The finding of the Collector (Appeals) that merely because the Department did not subject for five years, it cannot demand duty is not justified. However, the fact that the Department would have been aware from the description of the goods from some of the invoices that what was received was not permanent magnet would have reinforced the assessee's belief that there was no

difference between the two. In other words, the Departmental officers themselves did not notice the difference between the two items. Taking all these aspects into account and the instructions of Board itself which have been reiterated that a liberal view should be taken with regard to declaration and deviation from procedure in the early days of Mod-vat, I am of the view that, in the facts of this case, that the requirements of Rule 57G have been met. On this finding, therefore, I decline to interfere with the Collector's order.

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