Collector of Central Excise Vs. Srf Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-29-1998

Reported in : (1998)(103)ELT681TriDel

Appellant : Collector of Central Excise

Respondent : Srf Ltd.

Judgement :

1. The above reference application has been filed in terms of Section 35G(1) of the Central Excise Act, 1944 for reference of the following questions of law said to be arising out of the Tribunal's Final Order No. A/478/97-NB, dated 15-4-1997: (i) Whether the credit of duty paid on the inputs used in products which are captively consumed and are exempted from the whole of the duty of excise under Notification No. 217/86-C.E. can be allowed to the assessee? (ii) Whether the credit can be allowed to the assessee when the assessee has not declared the final products in their declaration filed under Rule57G? 2. The brief facts leading up to the filing of the application are that the respondents herein are engaged in the manufacture of chlorofluro hydrocarbons of methane (fluoron 11 and fluoron 12) classifiable under CET sub-heading 2903.10, and mixture of fluoron 11 and fluoron 12 classifiable under CET sub-heading 3823.00, and were availing Modvat credit of the duty paid on the inputs used in the manufacture of final products. They had filed a declaration under Rule 57G of the Central Excise Rules on 1-3-1989 indicating the inputs and showing fluoron 11 and fluoron 12 as their final products. During the period from March 1993 to July 1993, they availed credit of

duty paid on inputs used in the manufacture of fluoron 11 and fluoron 12 which were removed without payment of duty for manufacture of mixtures of fluoron 11 and fluoron 12, under Notification 217/86-C.E., dated 2-4-1986. The Department raised a demand on the grounds inter alia that credit was not available on inputs used in the manufacture of fluoron 11 and fluoron 12 removed at nil rate of duty under Notification 217/86-C.E. for further use in the mixtures of fluoron 11 and fluoron 12, since fluoron 11 and fluoron 12 were wholly exempted under Notification 217/86. The Additional Commissioner confirmed the demand while the Tribunal vide its Final Order allowed the appeal treating fluoron 11 and fluoron 12 as intermediate products in the manufacture of mixtures of fluoron 11 and fluoron 12 which were cleared on payment of duty, and applying the provisions of Rule 57D to the case. Hence the reference application.

3. Learned DR contends that since the mixtures of fluoron 11 and fluoron 12 are separate excisable commodities falling for classification under CET sub-heading 3823.00, they should have been shown in the 57G declaration and the declaration of fluoron 11 and fluoron 12 classifiable under CET sub-heading 2903.10 is not sufficient, even though both the products are chlorofluro hydrocarbons of methane. Since neither the description of the final product nor their classification was declared under Rule 57G, learned DR submits that credit cannot be extended to the respondents and they cannot also be treated as final products and, therefore, the provisions of Rule 57D are not attracted in this case. He supports the contention that a question of sufficiency of the declaration is a question of law requiring reference by citing the Tribunal's order in the case of Indian Hume Pipe Company Ltd. reported in 1996 (83) E.L.T. 172 and J.K Synthetics reported in 1997 (94) E.L.T. 91.

4. Learned Counsel draws our attention to paragraph 5 and 6 of the Tribunal's final order and submits that since there is no dispute that fluoron 11 and fluoron 12 as well as the mixtures thereof are chlorofluro hydrocarbons and since the mixtures had been shown as final products in the classification lists filed during the material period, it has been rightly held that the mixtures were declared by the assessees. Further since the mixtures of fluoron 11 and fluoron 12 were the final products for the respondents, the fact that they were not separately declared under Rule 57G

will not alter their character as final products. He submits that sufficiency or otherwise of the declaration is not a question of law requiring reference, but is only a question of fact, as held by the Tribunal in the case of Lupin Laboratories reported in 1994 (71) E.L.T. 278. He, therefore, prays that the application for reference may be dismissed.

5. We have considered the rival submissions and perused the case law cited supra. In the case of Indian Hume Pipe Company Ltd. supra, the Tribunal held that the question whether the declaration filed by the assessee declaring cement as an input along with its tariff heading is correct in terms of Rule 57G of the Central Excise Rules, 1944 for availment of Modvat credit is a question of law and, therefore, referred the same to the Hon'ble Karnataka High Court.

5.1 In the case of J.K. Synthetics Ltd. supra, the Tribunal held that the question as to sufficiency of the declaration under the Modvat scheme is a question of law referable to the High Court. (The question was whether general declaration of spin finish oil was sufficient to take within its scope "sapcostat finish" i.e. the input on which credit was availed and which is admittedly a type of spin finish oil).

Following the ratio of the above orders, we are of the view that a question of law arises requiring reference to the jurisdictional High Court and accordingly forward the following question of law for reference to the jurisdictional High Court: "Whether the declaration filed by the assessees declaring fluoron 11 and fluoron 12 and final products classifiable under CET sub-heading 2903.10 is to be accepted for the purpose of extending Modvat credit on mixtures of fluoron 11 and fluoron 12" 6. We would like to add that the decision cited by the respondents /assesses herein is distinguishable since in that case, the item in dispute on which credit has been taken viz. 7 ADCA was already declared an input for the manufacture of the final product and, therefore, the Tribunal held that it was not required to be declared once again as a fully manufactured intermediate product and that no question of law arises for reference in these circumstances.