

Commissioner of Central Excise Vs. Harness Wire System P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-20-1998

Reported in : (1999)(63)ECC598

Judge : K Venkataramani, Vice-, G Srinivasan

Appellant : Commissioner of Central Excise

Respondent : Harness Wire System P. Ltd.

Judgement :

1. This is an appeal filed by the department against the decision No.GS/976/B.11/93 dated 22.9.1993 whereunder the Collector (Appeals) had held that the respondent had intimated the department of the manufacture and the utilisation of the inputs and also held that the fact that the particular form prescribed for the purpose was not used would not be a bar of availing of the credit.

2. The respondents were manufacturers of wiring harness and battery cable assembly for which they had declared PVC sleeves and PVC tapes as inputs under Rule 57G. Subsequently they started manufacturing these two items. The declarations to be filed under Rule 57G were not filed by the assessee declaring PVC tapes and PVC sleeves as final product for which a demand was issued for recovery of modvat credit availed on inputs used for manufacturing the said product. The A.C. confirmed the demand. The respondent filed appeal to the Collector (Appeals) who held that as the assessee had obtained permission under

Rule 57F, (2) of the Rule for sending of the raw material to be converted into PVC sleeves and PVC tapes and also filed classification lists for these two items indicating captive consumption, they have brought to the notice of the department that those items were final product, and as such failure to file declaration under 57G is only a procedural lapse. Hence the present appeal.

3. Ld. D.R. Shri Kumar would argue that provisions of 57G are mandatory and the provisions of Rule 57F are only relating to category of utilisation of the inputs and the credit allowed in respect of duty paid thereon. Therefore even though the modvat is claimed of preventing cascading effect, the mandatory nature of Rule 57G viz. mentioning of the PVC sleeves and tapes as final product is a necessary one. He, therefore states that the order passed by the A.C. is correct in law.

He cites the decision of the Tribunal in the case of Asian Paints (India) Ltd. v. CCE 1992 (20) RLT 208. He also cites the decision of ERB in the case of Insulated Wires Ltd. v. CCE 1993 (44) ECR 131 where at page 135 of the said judgment the Tribunal had held that the provisions of Rule 57G is a mandatory requirement. As against this the Id. representative of the assessee adopts the reasoning of the appellate authority.

4. The respondents in this case were manufacturers of wiring harness and battery cable assembly. This is set off wire cut to pre determined links which can be joined together and fitted with connectors etc. to be used with electrical systems and automobiles. The respondent did not declare PVC sleeves and PVC tapes as inputs as final products had declared the same as inputs. In the order in original the A.C. has held that Rule 57G is a mandatory one. He relies on the judgment of the Tribunal in Aluminium Industries case 57 ELT page 28 and Usha Martin-Indore 46 ELT 392. The Collector in the impugned order has held as follows: To my mind, there is a slightly different dimension to this case. It is not a simple case of failure to declare. The appellant has, in the application under Rule 57F dt. 3.11.1990, declared the resultant goods and also stated that the goods "will be used by us in the automobile wiring harness which are liable to duty" and permission was granted on 27.11.1990. The classification list effective from 27.9.1990 also indicated that the appellant is manufacturing PVC sleeves and tapes; and

separately indicated that it was being used as captive consumption as well as for sale. Thus, the appellant had brought to the notice of the Department by these two communications the fact that it was manufacturing these two products and utilising them in the manufacture of its finished products. The credit on these two goods was taken only after this intimation was furnished to the Department. Therefore, although the failure to formally declare under Rule 57G exists, it is, in the facts of this case, not significant enough to merit denial of the credit considering that the appellant had brought to the notice of the department through the 57F application that these were inputs used in the manufacture of wiring harness. The case would be squarely covered by the decision in 31 ECR 111. The appellants would be in much stronger position because of the fact that, unlike in the reported case, they had intimated the Department as discussed above of the manufacture and utilisation of these products. I would therefore, hold that in the facts of this case, the department had been made aware that the appellant was using these inputs for the manufacture of the finished products that Rule 57G of the Central Excise Rule does not require specific permission of the Assistant Collector for availing credit of inputs and only required that the declaration indicating the particulars of the inputs and the finished products reach the office of the Assistant Collector before credit is taken. That condition has been complied with in this case, and the fact that the particular form prescribed for the purpose was not used would not, in my opinion, be a bar to availing of the credit. The application under Rule 57F too contains all the details that a declaration under Rule 57G is required to present.

5. In the Order-in-Original as well as in Order-in-Appeal both parties have held that no declaration has been filed under Rule 57G mentioning PVC sleeves and PVC tapes as final product. Once this fact has been accepted by both authorities which could not be denied then the conclusion should be that the respondent is not entitled to claim the modvat credit in respect of PVC sleeves and PVC tapes. In fact, in the case of Asia. Insulated Wires P. Ltd., 44 ECR 131 it has been held by Id. Member at para 9 as follows: Under this rule, the modvat user is required to file a declaration giving the description of the final products and the inputs intended to be used in each of such final products. The classification contains only the details of final products and its classification and rate of duty. The filing of declaration under Rule 57G is a mandatory requirement and is a pre-condition for availment of

modvat credit. This omission cannot be waived or condoned. The submission thereof is designed to put the department on notice about the use of credit for payment of duty and also enable the A.C. to call for additional information which he may require. By not filing the declaration the respondents have prevented the department from exercising the necessary advance check. The Supreme Court in *Indian Aluminium Co. Ltd. v. Thane Municipal Corporation* had held that non-observance of even a procedural condition which is a condition precedent is not to be condoned if it is likely to facilitate commission of a fraud and introduce administrative inconveniences. On the said principles the department's proposal for not granting modvat benefit for Aluminum Wires (inputs) would be justified. The South Regional Bench of the Tribunal held, in *Paro Food Products v. Collector of Central Excise*, . 1998 (19) ECR 127 (CEGAT) SRB did not accept the plea of the appellants that the irregularity of not mentioning metal containers as an input was condonable. The appellants in that case had given the declaration in general terms as packing materials. Here no declaration for Aluminum Wires had been given and hence credit had been taken on account of an error and omission on the part of the manufacturer which comes within the ambit of Rule 571(I) and not the proviso thereto where the elements of wilful misstatement, collusion or suppression of facts on the part of manufacturer or assessee come into reckoning. *Asian Paints (India) Ltd. v. CCE 20 RLT 208* in para 7 thereof it has been held as follows: 7. In our view Rule 57G of the Rules, specifically enjoins on the manufacturer to specifically in a mandatory way declare the items used as inputs intended to be used in each of the final product as expression has been used in the Rule.

7. In our view therefore, the finding of the Collector (Appeals) that the department had been made aware that appellants were using these inputs for the manufacture of final products that Rule 57G does not require specific permission of A.C. for availing credit and only required that the declaration indicating the particulars, of the inputs and the finished products reach the office of the A.C. before credit is taken is clearly wrong. The Collector himself in the order has found that there is a failure to formally declare under Rule 57G existing in this case which in our view is fatal to the respondents' case.

8. We, therefore, set aside the order of the Collector (Appeals), and restore the order of the Assistant Collector.

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