

Commr. of C. Ex. Vs. Soni Soaps and Cosmetics Pvt. Ltd.

Commr. of C. Ex. Vs. Soni Soaps and Cosmetics Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/14367

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-1998

Reported in : (1999)(112)ELT985Tri(Mum.)bai

Appellant : Commr. of C. Ex.

Respondent : Soni Soaps and Cosmetics Pvt. Ltd.

Judgement :

1. The Commissioner of Central Excise, Mumbai-I has filed this appeal against the order dated 3-5-1994 passed by the Commissioner of Central Excise (Appeals), Mumbai. The Respondents are engaged in the manufacture of goods falling under Chapter 34 of the Central Excise Tariff Act, 1985 and are availing of Modvat credit facility under the Rule 57A of Central Excise Rules. The jurisdictional Central Excise Superintendent issued show cause notice on 3-12-1990 alleging that the Respondents had availed Modvat credit wrongly on their input received on 21-2-1990 against Modvat declaration under Rule 57G acknowledged by the department on 22-5-1990. It was alleged that the Modvat credit amount to Rs. 36,877/- taken by the Respondents on 24-5-1990 was erroneous and the show cause notice proposed disallowing it because it pertained to the inputs which were received by the Respondents prior to the filing of declaration under Rule 57G. The Assistant Commissioner adjudicated the matter by his order dated 2-1-1993 and confirmed the demand. The Assistant Commissioner's order was challenged before the Commissioner (Appeals) who has passed the impugned order by which he set aside the Assistant Commissioner's order by relying upon the Tribunal

decision in the case of Kerala State Electronics Development Corporation v. CCE 2. The Id. DR Shri S. Suman contended that the Commissioner (Appeals) has erred in relying on the decision of the Tribunal in Kerala State Electronic Development Corporation as that order was not a final order but was only an order remanding the matter. It was submitted that in this case the inputs were received by the Respondent on 21-2-1990 whereas the declaration was filed on 22-5-1990. The proper course would have been by the Respondent to apply for verifying all the inputs lying in stock on the filing of declaration and then seek permission of Assistant Commissioner to take Modvat credit under Rule 57H. The Respondents have not complied with this procedure.

3. Shri S.N. Sejpal, the learned Counsel for the Respondents referred to their Cross-Objection and contended that the Respondents received inputs into their factory only on 23-5-1990 even though the gate pass is dated 21-2-1990. It was further contended that they had infact filed the Modvat declaration under Rule 57G on 17-4-1990 and not on 22-2-1990 and the acknowledgment on their declaration on 17-4-1990 is also on their letter itself which was dated 29-3-1990. He also referred to the Assistant Commissioner's letter dated 23-5-1990 stating that the Respondents letter dated 29-3-1990 was received on 22-5-1990. It was further submitted that as per entry in their 23A Part I account the input was issued for manufacture of final products on 24-5-1990, i.e.

after filing the modvat declaration. In this context reliance was placed on the decision of this Bench in the case of Collector v. Formac Engineering Ltd. 4. The rival submission have been carefully considered. The Commissioner (Appeals) in the impugned order has followed the Tribunal decision in Kerala State Electronics Development Corporation (supra) wherein the Tribunal took the view that there is nothing in Rule 57G to warrant a conclusion that the manufacturer would not be entitled to take Modvat credit if the inputs had been received prior to the filing of the declaration. It is further seen that in the decision of this Bench in Formac Engineering, the facts were similar to the present appeal. In that case the declaration had been acknowledged in June 1987 and the assessee took credit on the inputs received earlier in the month of May, 1987 on 30-6-1987 which was after the acknowledgement of their declaration. The department objected to this on

the ground that the inputs had been received much earlier to the declaration and that the assessee ought to have followed the procedure under Rule 57H for taking of credit on such inputs received earlier to the filing of declaration. This contention was not accepted by the Tribunal and the Tribunal referred to the specific provision under Rule 57G(2) and observed that the procedural requirement is that the manufacturer before taking credit should obtain a dated acknowledgement in respect of the declaration to be filed under Rule 57G. The Tribunal noted that where the credit has been taken only after the receipt of the acknowledgement it comes within the purview of the Rule 57G, itself and it was further held by the Tribunal that even for the purpose of Rule 57H, even if the technical requirement of applying to the Assistant Commissioner is not complied with, the assessee has to be given benefit of the credit especially when the assessee has taken the credit only after filing the declaration and not on receipt of the inputs on his own. In the present case also the Respondents had admittedly taken the credit only after the receipt of the acknowledgement from the Assistant Commissioner on 22-5-1990. The ratio of the above said decisions of the Tribunal, therefore come into play and applying that ratio, the impugned order is upheld and the appeal is rejected.

5. The Cross-objection being supportive of impugned order is mis-conceived and it is dismissed as such.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com