

Commissioner of C. Ex. Vs. Jct Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-1998

Reported in : (1999)LC344Tri(Delhi)

Appellant : Commissioner of C. Ex.

Respondent : Jct Ltd.

Judgement :

Notification No. 225/86-C.E., dated 3-4-1986 provides, inter alia, for exemption from duty on final product namely Polyster Staple Fibre (PSF) equivalent to the duty paid on Mono Ethylene Glycol (MEG). In other words this was simpliciter a notification for set-off duty paid on MEG towards duty payable on PSF. No procedure was appended to the notification itself for availment of benefit of notification. However it appears that a trade notice was issued by various collectors for availing the set-off procedure under exemption notification 225/86-C.E. This set of procedure was essentially on the line of RG 23 Part I or Part II or RG 23A Part I & II i.e., on the lines of Proforma or Modvat credit procedure. The procedure and the registers prescribed in terms of the trade notice clearly indicate that there was no one-to-one correlation between inputs and the final product mentioned in Table II to Notification 225/86-C.E.2. Out of the PSF manufactured by the respondents, some quantity was exported by them without payment of duty under Rule 191B of the Central Excise Rules, 1944. Since there was no one-to-one relationship, credit earned on MEG and utilised in PSF which was ultimately exported would have been utilised by the respondents towards duty payable on

clearances of PSF for home consumption. But this was not to be. Learned Advocate Shri V.K. Agrawal for the respondents has brought to our notice a letter dated 15-2-1990 from the Inspector, Central Excise, Hoshiarpur which directs the respondents to reverse the credit taken on such inputs which have been utilised in clearance of export product PSF. Even though the respondents got that order set aside by filing an appeal to the Collector (Appeals) vide Order-in-Appeal No.39/C.E./Appeal/90, dated 11-9-1990, in the meantime however the Modvat credit was reversed by the respondents at the behest of the local officers. The respondents therefore were forced to file a refund claim for quantum of the reversed amount. Lower appellate authority has sustained the said refund claim. Hence this appeal by the Revenue.

3. Learned JDR, Shri R.S. Sangia has submitted that Notification No.225/86-C.E. does not envisage granting of refund of duty paid on inputs utilised in manufacture of final product, unlike the Modvat credit procedure (under Rule 57F of Central Excise Rules, 1944). Therefore granting of refund is not permissible. He however does not object to the fact that had the amount of duty paid on such inputs continued in the set-off register it could be and would have been utilised towards duty on clearances of PSF for home consumption, in view of the procedure laid down in Trade notices issued by the Department, as referred above.

5. We are unable to find much force in the plea of the Revenue. The procedure prescribed clearly envisaged that there is no one-to-one correlation-ship between the inputs and final product. This finding is further fortified by Tribunal's judgment directly on Notification No.225/86-C.E. in the case of J.K. Staple and Tows & J.K. Synthetics Ltd. v. Collector of Central Excise reported in 1997 (71) ECR 945 (Tribunal).

6. We further observe that the reversal from the set-off register had to be made by the respondents under coercion at the behest of the Revenue authorities and due to the proceeding commencing from Inspector of Central Excise letter dated 15-2-1990. Revenue cannot therefore contend that the refund has wrongly been given. After having wrongfully reversed credit in the set-off register, denying the refund to the respondents only on this technical point raised by the Revenue would amount

to a wrong doer having an advantage of its wrong act. If the Revenue had not forced the respondents to reverse the credit in the set-off register, as stated earlier, the respondents would have utilised that credit for duty payable on clearances of PSF for home consumption. The objection taken by the Revenue, therefore, in its appeal is merely a procedural objection particularly when they themselves admit that the respondents could avail of a drawback procedure. The appellants, could also avail of the procedure for rebate or excise duty under Rules 12 and 12A of Central Excise Rule, 1944. It is well-settled proposition that a substantive benefit could not be denied for a procedural lapse.

7. In view of the forgoing, we do not find any substance in Revenue's appeal and we dismiss the same.

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