Herbertsons Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-1998

Reported in : (1999)(111)ELT820Tri(Mum.)bai

Appellant : Herbertsons Ltd.

Respondent : Commissioner of Central Excise

Judgement :
1. The appeal is directed against the impugntci order captioned above whereby the Collector has denied the Modvat credit on glass bottles used in the manufacture of edible preparations falling under Chapter 20, 21 and 33 of the Central Excise Tariff Act, 1985. The Collector has found that there were broken bottles and such breakages occurred during the filling operations or during the transfer of stock from raw-material godown to the factory. It was held that during the period 1-3-1987 to 31-3-1990 there were such ineligible quantity of bottles which were broken on which Modvat credit involved was Rs. 1,42,423.70.

Show-cause notice was issued alleging that these inputs were not used in the manufacture of the final product and as such credit thereon was inadmissible. It was alleged that the Appellants ought to have followed the procedure under Rule 57F(4)(c) for disposal of the waste arising during the manufacture. The Collector adjudicated the matter holding that the amount of demand be reworked after working out the duty involved on the breakages which occurred during the transit from raw-material godown to the place where filling operations are carried out. This quantity was to be segregated for disallowance of Modvat credit. Penalty of

Rs. 10,000/- was imposed on the Appellant.

2. The Learned Counsel for the Appellant Shri A.R.Wani appearing along with Learned Counsel Ms. Rajani Divkar submitted that the Appellants have made it clear in their reply to their show-cause notice that there are no breakages during the transit of the glass bottles from the raw-material godown to the factory for filling operations and that the breakages occurred only during the time of washing and cleaning of the bottles. Learned Counsel further relied upon the Tribunal decision in the case of Collector of Central Excise v. Eros. Pharma (P) Ltd. - 1994 (73) E.L.T. 72 (Tribunal) and Commissioner of Central Excise v. Merry Weather Food Products Ltd. - 1996 (85) E.L.T. 348 wherein the Tribunal has held that bottles broken in the process of packing of the goods are eligible for Modvat credit under Rule 57G of the Central Excise Rules.

3. We have heard Shri V.K.Suman, the Learned DR. We find that the in the reply to the show-cause notice, the Appellant have explained on what stage the breakages of bottles occur. They have stated that breakages occurred in the production department where the operator lifts each bottle and place it on the machine for washing and cleaning.

After washing and cleaning the bottles move on the conveyor belt to the filling and capping machine and at this stage some bottles are broken which are recorded in the daily production report of the Production Department. The Appellants have admitted in their reply that any breakage occurring in transit from the storage place to the plant, will not be eligible for Modvat credit i.e. before taking the bottles for using in the production. They have stated further they have not used credits on account of such breakages and such breakages having not occurred. In this view of the matter, if, in fact no breakages occurred prior to the filling stage, there is no need to re-work the demand as ordered in the Collector's order. The eligibility to Modvat credit of the bottles broken at the filling operation stage has been upheld by the above cited two decisions of the Tribunal wherein it has been held that such breakages will be covered by Rule 57D of the Central Excise Rules, regarding Modvat credit as credit of duty contained in input emerging as waste after being put to use in the intended manufacturing process Therefore the impugned order is set aside and the appeal is allowed.