Commissioner of C. Ex. Vs. Zenith Rubber and Plastic Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-27-1999

Reported in : (1999)(113)ELT527Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Zenith Rubber and Plastic Works

Judgement :

1. This is an appeal filed by the Department against the decision of the Collector (Appeals), Bombay made in Order-in-Appeal No.PCJ-556/Bom. III/94, dated 10th October, 1994 whereunder he held that the assessee had informed availing of Modvat credit and even though he filed declaration afterwards. The assessee is engaged in the manufacture of rubber articles and availed Modvat credit amounting to Rs. 11,100/- without filing of declaration as required under Rule 57G of the Central Excise Rules. The Collector in the appellate order has held that the assessee had informed the 19-1-1988 which was before taking the credit. The action on the assessee's part that they did not file declaration in a proper form would not itself entitle to claim the credit. Hence the appeal by the Department.

2. I have heard the ld. JDR. Respondent is not present in spite of issue of notice.

3. In the grounds of appeal it is stated by the Department that the letter dated 19-1-1988 referred to by the Collector (Appeals) only intimated about the crossing of the exemption limit and it only mentions the assessee's intention of taking Modvat credit in future. It could not mean, he argues that he intimated about filing of

declarations which is a legal requirement. He did not ask for any exemption from filing the same. It is further argued by the ld. JDR that in the said letter it does not say anything about Rule 57G(1) which mentions of the finished products as well as the inputs.

Therefore, he argues that the entire order passed by the Collector (Appeals) is wrong in law.

4. I have considered the submissions made by the ld. JDR and perused the records. Rule 57G(1) is a Salutory provision making filing of the declaration as a mandatory requirement. It is not an empty formality. I am of the view that the door step for entering into the arena of the Modvat regime is filing of the declaration under Rule 57G(1). If a person fails to do so he could not avail of the benefit of the provision of Modvat. I am fortified in this view by the judgment of the Single Member rendered in the case of P.G. Conductors v. C.C.E. 1996 (81) E.L.T. 336.