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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-15-1999

Reported in : (1999)(83)LC291Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : Maruti Udyog Ltd.

Respondent : Cce

Judgement :

1. The appellants are aggrieved by the order of the Commissioner of Central Excise, New Delhi who has confirmed a demand of Rs. 2,70,33,595/- raised under four separate show cause notices and directed its recovery under Rule 57I of the Central Excise Rules, upholding the charge of contravention of Rule 57F(1)(ii) of the Central Excise Rules for the reason that the appellants removed inputs to job workers without payment of duty. The Commissioner has held that the appellants are not covered by the provisions of Rule 57F(2) as contended by them.

2. We have heard Shri V. Sridharan, learned Advocate who submits that the issue is covered by the Tribunal's earlier Orders No. A/746 to 750/95-NB dated 15.9.1995 and Shri Satnam Singh, learned SDR who seeks to distinguish the same.

3. On a careful consideration of the submissions of both sides, we find that the appeals before us today are identical to the ones disposed of by the Tribunal's

earlier order cited supra wherein also the issue of eligibility to the benefit of modvat credit on inputs of fuel tanks and struts used in the manufacture of motor vehicles. The Tribunal has held in para 10 of its order that the provisions of Rule 57F(1)(ii) are not applicable to the facts of the case. Para 10 is reproduced below: We see great force in the contention of the appellants that the provisions of Rule 57F(1)(ii) are not applicable to the facts of this case. This Rule applies inter alia to a case where inputs in respect of which credit has been taken under Rule 57A are removed, subject to the permission of the Collector, from the factory for home consumption. In the present case, the appellants had removed the inputs to job workers for manufacture of intermediate products viz. fuel tanks and struts which were to be returned to the appellants for use in the manufacture of motor vehicles. Therefore, it cannot be held that the components were removed by the appellants for home consumption so as to attract Rule 57F(1)(ii). Our view finds support from the Trade Notice dated 4.8.1992 issued by the Poona Collectorate, relevant portion of which is reproduced below: It is hereby emphasised that sending such modvat inputs to job-workers for further manufacture of goods on behalf of the principal manufacturer would not amount to removal for home consumption or export as the goods are clearly meant for further manufacture or processing which are returned to the principal manufacturer for use in his factory in the manufacture of final product.

Apart from the above, Rule 57F(2) is in the nature of an exception to Rule 57F(1). The rule, specifically begins with non-obstante clause viz. ..."notwithstanding anything contained in Sub-rule (1)...". The adjudicating authority has ruled out the applicability of Rule 57F(2) on the reasoning that: a) the appellants did not have permission to clear the inputs as such for manufacture of intermediate products; b) they have not followed the procedure for movement as indicated in the Trade Notice reported in 1986 (25) ELT 43 i.e. issue of different coloured challans into triplicate, serial machine numbering of sets of pages, preauthentication of each page of the challan book by the Proper Officer and each consignment to the outside factory being sent with the original and duplicate challans.

c) issue of the appellants' own Material Delivery Notes which have not been authenticated by the Proper Officer and d) non-maintenance of accounts by

appellants or job workers in the pro-forma prescribed in the trade notice.

On a perusal of the relevant records, we are satisfied that the appellants have substantially complied with the procedural requirements of Rule 57F(2). Vide letter dated 17.7.1987, the appellants had requested the Assistant Collector for general permission under Rule 57F(2).

4. In para 12 of the order, the Tribunal has dealt with the submission of the learned DR, that the manufacturers of fuel tanks and struts have paid duty on them instead of availing of the benefit of Notification 214/86 and, therefore, the appellants are not entitled to the facility under Rule 57F(2). The Tribunal has rejected the DR's contention on the basis of Tribunal's decisions in the case of Tacit Asia Ltd. , Bright Steel Mac Fabrics v. CCE reported in 1994 (69) ELT 278 : 1994 (50) ECR 378 (T) and CCE v. Konark Wires P. Ltd. reported in 1995 (77) ELT 315 (ERB) : 1995 (58) ECR 133 (T). Since all the issues raised in the present appeals have been dealt with and decided upon in the Tribunal's earlier order, the ratio of which squarely applies in the facts of the present case, we set aside the impugned order and allow the appeals, following the ratio of the earlier decision in the assessee's own case.

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