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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-1999

Reported in : (1999)(66)ECC461

Judge : S T Gowri, G Srinivasan

Appellant : Dr. Beck and Co. (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This is an appeal filed against the decision of the Additional Collector of Central Excise & Customs, Pune made in File No.V/Modvat/15-128/Adj/89, dated 19.12.1991 wherein the adjudicating authority confirmed the duty amounting to Rs. 4,36,705 under Rule 571 read with Section 11A of the Central Excise Act, and he also levied a penalty of Rs. 50,000.

2. The Appellants are manufacturing a number of chemical products such as thinners, paints and varnishes including enamels and lacquers, etc.

with the Modvat claim for the inputs w.e.f. 1.4.86 the Appellants filed declaration in terms of Rule 57G by its communication dated 31.3.1986.

The said letter mentioned the inputs as well as the finished goods. The Appellants modified some of their existing products and they were under the bona fide believe (sic) [belief] that no further Modvat declaration was required to be filed in respect of the said products, as the products are of the same kind finished products

already declared and were covered by the same chapter and sub-heading. On or about 25.3.1988 the Appellants filed a declaration in respect of their new products under the cover of their letter 24.3.1988. A show cause notice was given on 12.12.1989 alleging that during the period April 1987 to March 1988 the assessee has used these inputs mentioned in the annexure and certain modifications of final products which were not declared under the provisions of Rule 57G. It is also charged in the said notice that during the period the assessee had cleared the final products on payment of duty from their PLA as well as under RG-23A. Since, the final product was not declared by them these were not entitled to Modvat credit as the inputs were not used for the purpose for which they were brought into the factory, i.e., they have not used the declared inputs in the declared final products. But they have used the said inputs in the final products which they have not been declared.

3. On 2.3.1990 they filed the reply. After considering the reply the impugned order was passed namely confirming the duty, hence this appeal.

4. It is argued by the Learned Counsel, Shri Korde, that the stand of the Department in the present case is erroneous and it disclose (sic) [discloses] an approach which defeats and destroys the basic spirit and intend of the beneficial piece of legislation. He went on to explain about which, the Appellants also referred to the budget speech made by the Finance Minister on 29.12.1996. He stated that filing of declaration under Rule 57G is nothing but a procedural requirement. If the manufacturer is entitled to the substitute benefit by virtue of Rule 57A it is the duty of the honest manufacturer to adopt a positive and constructive approach and so that the assessee manufacturer get the benefit law. He also stated that why the Appellant should take any action which would deny benefit to them. Therefore he specifically stated that the Appellant could never been imagined that he would have mis-stated to deny himself of any benefit. He specifically stated that the facts in the case must show that cause of suppression and that on account of suppression a manufacturer could take the credit. In other words he states that had the manufacturer disclosed what he suppressed he would not have been able to take the credit. That debated approach itself, in the words of the Ld. Counsel is to defeat the beneficial piece of legislation. As against

this he also cited some decided cases.

5. The Ld. DR reiterated the grounds. He stated that filing of declaration is a substantive requirement and not procedural or technical one, because Rule 57G provides in the said Section "shall file a declaration". This means it is a mandatory requirement and not procedural requirement.

6. We have carefully considered the rival submissions. The question involved in this case is whether there should be specific declaration filed in terms of Rule 57G so that the assessee is entitled to avail Modvat credit. If we go through the section dealing with the Modvat procedures, purpose of Rule 57A is to grant (sic) [grant] benefit of Modvat credit to manufacturers using specified goods in and in relation to the manufacturer of specific final products. Rule 57G of the Modvat Rules contains the following words: "If manufacturer intending to take the credit of the duty paid on inputs under Rule 57A shall file a declaration to the Assistant Commissioner of Central Excise, having jurisdiction over his factory..." 'shall file a declaration' is very crucial. In Clause 2 of Rule 57G it is specifically stated that the manufacturer who has filed a declaration under Section Rule (1) may, after obtaining acknowledgment as aforesaid, take credit of the duty paid on inputs received by him. When we read the exact use in Rule 57G which enjoins the manufacturer in a mandatory way to file a declaration. The filing of declaration to us is not a mere formality.

The Tribunal in the case of Indian Hume Pipe Co. Ltd. v. Collector of Central Excise, Bangalore it has been held in After hearing of the case the orders were reserved and the file had got mixed up in the Registry and has been traced now. We observe that the point that falls for consideration is whether the declaration filed containing the description of the goods i.e.

cement showing the main tariff heading in the tariff can be taken to be adequate for the purpose of Rule 57G. The appellants' plea is that this should be considered adequate for the reason that appellants have come on record that they will be getting the cement as on input and the authorities had been made aware of the item which would be brought in by them for the purpose of Modvat credit.

While it could be argued that even if the appellant's declaration was not adequate, the authority namely, the Asstt. Collector, to whom the same was submitted could have asked for a clarification from them in regard to the nature and variety of cement which they would be bringing, we observe that the Appellants are seeking the benefit of the Modvat and it is incumbent on them to comply with the requirements of law while filing the declaration notwithstanding the duty cast on the Asstt. Collector for checking the declaration filed. The declaration filed does not indicate as to the nature and variety of the cement which the appellants would be bringing. It is all the more imperative on the part of the appellants to have filed variety-wise declaration when different tariff headings have been prescribed for different varieties of the cement. A general description of the goods filed cannot be considered adequate for the purpose of Modvat credit. In this context, Hon'ble Supreme Court in the case of M/s. Ajanta Steel Corporation v. Collector of Central Excise have held as under.

7. Even if we hold that filing of declaration under Rule 57G is mandatory, the case has to be viewed from the limitation aspect. The show cause notice is dated 12.12.1989. The period in dispute was from March 1987 to March 1988 involving more than 6 months. Hence large period has been invoked. The question is whether non-filing of 57G declaration could enable the department to issue the show-cause notice invoking longer period of limitation? In our view this has been answered in the case of the following cases: Suhas Electronics Put.

Ltd. v. Collector of Central Excise ; Plasticemix Industries v. Commissioner ; Commissioner v. Asia Insulated Wires Pvt. Ltd. . In Asia Insulated Wires Pvt. Ltd., Id. single Member of the ER Bench at page 815 has held as follows: As already pointed out, that non-inclusion of the inputs in the 57G declaration is not a case of suppression. The special treatment provided against suppression by way of longer time limit for the issue of demand will arise, if, by such suppression, the department was prevented from getting to know the facts for issuing a notice in time which they could do only on coming to know later about the suppression. It is nobody's case that the respondents got any benefit by such non-inclusion which they could not have got if they had declared the full details. In fact, by non-inclusion of the inputs in question they did not stand to gain anything but on the

contrary, made their position vulnerable. But this vulnerability can be only to the extent of a demand for the normal period of six months. If every such case of incomplete declaration is made out to be a case of suppression and the longer period applied, the normal period of six months will have very little application and every such case will straightaway attract the longer period. If what is alleged to have been suppressed had not so been suppressed but declared, the respondents would not have been denied the benefit but got it without any let or hindrance. In the circumstances, their failure cannot be taken as a case of suppression at all to invoke the longer period.

In the WRB decision in Plastichemix Industries at page 469, paragraph 6 it held as follows: After hearing both the sides, we find that there is no dispute that both master batches and polypropylene can be brought in and used as an input. The only omission on the part of the appellant is that they have not declared polypropylene moulding powder as a final product in their declaration. On account of this omission, they would not be in a position to utilise the credit in regard to duty payable on polypropylene moulding powder. All the same whether this omission can be with an intention to evading duty is a point to be looked into. Since polypropylene moulding powder is also a notified final product under the Modvat Scheme in regard to polypropylene moulding powder as final product, so as to avail of Modvat credit, which was not legally eligible for this product. Moreover, in this case, the appellant have been submitting RT-12 returns alongwith, gate passes and RG-23A Part II extracts, for the undeclared final product and hence the error or omission in non-declaring the final product could have been pointed out within the normal period of limitation. We, therefore accept the plea that the demand is hit by time bar, apart from our accepting the plea that even if credit is sought to be denied in regard to undeclared final product, that credit could not get extinguished because of the fact that the final product, in which it has gone, is not an exempted one and such a credit would always be available for utilisation towards duty payment in regard to the declared final product master batches. This observation is only meant to show that there is no revenue implication in the final analysis. However, we are allowing the appeal only on the ground of time bar.

8. Following these two judgments in the case of Suhas Electronics has held in paragraph 4 thereof, the levy of penalty was set aside.

9. Here in this case it has been argued by Shri CM. Korde, Ld.

Consultant that no assessee would take a particular action which will not be beneficial to him, and such an action cannot help the department to invoke the longer period for demand of the tax.

10. We have considered this aspect. The judgments of Asia Insulated Wires Pvt. Ltd. and Plastichemix Industries (supra) clearly held it in favour of the assessee. We (sic) [we are] therefore of the view that while technically speaking, assessee is bound to given the proper declaration under Rule 57G we cannot loss (sic) [lose] sight of the fact that longer period of limitation involve contumacious conduct of the assessee enabling the department to invoke longer period of limitation has to be looked into. We are therefore of the view that the assessee's case is made on time bar. Assessee in this case has shown that the conduct was not contumacious or deliberate intention to evade the duty. We therefore allowing (sic) [allow] the appeal of the assessee on the question of time bar.

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