

Commissioner of Central Excise Vs. Cheviot Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-28-1999

Reported in : (1999)(112)ELT58TriDel

Appellant : Commissioner of Central Excise

Respondent : Cheviot Co. Ltd.

Judgement :

1. The issue involved in this appeal, filed by the Revenue is whether the benefit of Notification No. 53/88, dated 1-3-1988 is available to the waste, scrap and paring or plastic obtained during the process of manufacture of HDPE tape, fabrics, bags and sacks.

2. Shri H.K. Jain, Id. S.D.R. submitted that the scrap, etc. is arising at various sages of manufacture of HDPE tape, fabrics, bags and sacks.

The duty has been paid by the respondents, M/s. Cheviot Co. Ltd. only on plastic granules on which Modvat credit has also been availed of that the waste has been generated from the products on which duty of excise has not been paid. As the duty of excise has not been paid, the condition stipulated in the notification that the inputs should have suffered the duty, has not been fulfilled and accordingly the benefit of notification should not have been extended to the respondents. In support of his contention, he relied upon the decision of the Tribunal in the case of Tirupati Foams Pvt. Ltd. v. C.C.E. reported in 1994 (72) E.L.T. 770 (Tribunal).

3. Shri J.S. Agarwal, appearing on behalf of the respondents, submitted that the waste, paring and scrap has arisen from the material on which duty has been paid, that availing of Modvat credit does not make the inputs as non-duty paid. In the similar circumstances, the benefit of Notification No. 53/88 was made available in the case of C.C.E., New Delhi v. Bharat Seats Ltd., Final Order No. 301/99-C, dated 17-4-1999 1999 (108) E.L.T. 847 (Tribunal). He also placed reliance on a decision in the case of Jain & Jana v. C.C.E. vide Final Order Nos.

1257-1258/98-C, dated 21-12-1998.

4. We have considered the submissions made by both the sides. The waste, paring and scrap has arisen from the material on which the duty has already been paid and as such the benefit of Notification No. 53/88 is available to the respondents as they have fulfilled the condition of the notification. It is a settled law that the duty paid character of the inputs is not taken away by mere fact of availing of Modvat credit.

Accordingly, we find no reason to interfere with the impugned order and reject the appeal filed by the Revenue.

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