

Cce Vs. Siemens Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-14-1999

Reported in : (2000)(89)LC425Tri(Mum.)bai

Judge : J S Murthy

Appellant : Cce

Respondent : Siemens Ltd.

Judgement :

1. This is the department's appeal against the impugned order dated 23.12.1994 praying for setting aside the same and to restore the order-in-original dated 24.3.1994. The facts of the case in brief are that the respondents are engaged in the manufacture of products falling under the Central Excise Tariff Act, for which they are using wires and cables as inputs and they are availing Modvat credit on them. They have received the said inputs from Ms. Anandji Cables under the gate pass No. 42 dated 10.6.1993 and No. 51 dated 26.6.1993. M/s. Anandji Cables have wrongly paid the Central Excise duty under the above documents, and the respondents is the consignee of the same. The jurisdictional Superintendent of M/s. Anandji Cables informed that the clearance was below 30 lakhs on the above gate passes and the appropriate rate of duty was nil. The respondents have availed the Modvat credit on the said gate passes to the extent of Rs. 15,892/-. The payment of the Excise duty by M/s. Anandji Cables was wrongful one which has enabled the respondent to take Modvat credit. Show cause notice dated 3.12.1993 was issued to the respondent, seeking demand and the recovery of the

said amount from the respondent and the respondent has replied to it on 22.12.1993. After hearing the respondent the Assistant Collector has confirmed the demand under the show cause notice on 24.3.1994. The respondent preferred the appeal against the said order and the Collector (Appeals) has allowed the appeal and set aside the impugned order. Hence this appeal.

2. The learned JDR appearing for the appellant has submitted in the course of arguments that Rule 57E stipulates that if the duty on the input is varied subsequently due to any reason whatsoever, the credit allowed shall also be varied. The Modvat credit availed by the respondent has to be disallowed as the duty on the inputs was nil under the benefit of the notification. The stand of the Collector (Appeals) is not proper as his earlier order dated 28.9.1994 is pending decision before the Tribunal from 22.12.1994. As per the Finance Ministry's circular dated 4.1.1991 if the duty is paid in case of goods which are fully exempted it will be in the nature of the deposit to the Government and not a duty. Notification 1/93 exempts the duty upto the clearance of Rs. 30 lakhs which was availed by M/s. Anandji Cables. So the payment by M/s. Anandji Cables is not a duty and no Modvat credit is permissible to the respondent. Shri H.K. Motwani, Manager of the respondent has supported the impugned order and has urged that the Modvat rules are strictly complied in the instant case in hand. As observed in the impugned order, and in the absence of any claim of refund of the amount deposited by M/s. Anandji Cables, the respondent need not pay back the Modvat credit taken by him.

3. Perused the show cause notice and the reply, orders of lower authorities, Rule 57E and Rule 57I(i). From the facts of the case as available on the record, it is seen that the supplier of the respondent was eligible for benefit under notification 1/93 because the clearance was below Rs. 30 lakhs. Still he has paid the duty on the inputs supplied under the gate pass. Now the question is whether the supplier of the respondent is bound by the notification or not. It is the choice of the party to avail the benefit or not. If the supplier of the respondent has paid the duty prescribed on the inputs, and it is cleared under the gate pass, and it is received by the respondent and utilised in the course of his manufacture of the final product, the respondent is entitled to claim the benefit of Modvat. As held by the

Collector (Appeals) there is no dispute in this case about the observance of the Modvat rules by the respondent. The appeal of M/s.

Anandji Cables is not yet finally decided and it is pending before the Tribunal as contended by the parties. There is no question of variation of duty on the inputs as contended by the appellant. This is the case of benefit of exemption from payment of duty. Rule 57E does not apply to the instant case in hand. The inputs are not having nil rate of duty at the time of clearance. So the payment of duty under the gate pass by the supplier of the respondent has to be treated as duty and not the deposit. The grounds of appeal are not sufficient to accept the case of the appellant for the above said reasons. So the appeal cannot be allowed and is rejected.

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