

Commissioner of C. Ex. Vs. Excel Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-27-1999

Reported in : (1999)(113)ELT602Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Excel Industries Ltd.

Judgement :

1. This reference application was argued by Shri Agarwal. The assessee was represented by Shri Phene.

2. The application was received on 22-6-1998. The question of law in Column 8 of the Form No. E.A. 6 of the paper book read as follows : "Whether in the light of discussion above Modvat credit can be allowed without filing the declaration under Rule 57G which is a substantial requirement and not a procedural format requirement under Central Excise Rules, 1944." 4. At a later date on 22-3-1999, an amended application was filed in which the question of law was reframed as under : - "Whether the requirement of filing the declaration in a specified form under a specified rule could be considered as complied with in a case where declaration was given in some other document prescribed under a different rule. Specific form is prescribed for specific declaration with a view that declaration given in the form was examined from the angle for which the form is intended. If a declaration is given in some other document, it is not a declaration in the true sense for the intended purpose as prescribed because the declaration escapes the scrutiny which it needs to and should have undergone whether the Tribunal

was right in holding that such declaration was a correct declaration." 5. The reasons for filing this amendment are not very clear. We are inclined to dismiss the initial application as well as the so called amendment as not bringing out a substantial question of law. But we shall not do so but would rather go into the issue to examine whether the Id. Commissioner has applied his mind to the judgment of the Tribunal.

6. In the impugned judgment of the Tribunal, two aspects were raised.

The first was limitation. It was claimed that the use of the two inputs viz. phosphorous and chlorine in the manufacture of phosphorous trichloride which was the intermediate product in the manufacture of final product called sequacel, was known to the department both by way of classification list as well as the declaration filed under Rule 57G.(Para 5 of the Tribunal's order). The second issue was of the requirement of the specific declaration. It was claimed that a specific declaration was filed showing the use of the inputs in the manufacture of the intermediate product. The Tribunal after taking into account both the submissions had allowed the appeal.

7. In the face of this specific finding, the department could not entertain the belief that the specific declaration was not filed at all. The manner in which the so called question of law is attempted to be framed gives the clear indication that none in the Id.Commissioner's office has bothered to apply their mind to the observations made by the Tribunal in the impugned order. On this ground, we find that the application is not worth consideration at all.

8. In the judgment in the case of Poullose & Matthen v. C.C.E. 1989 (43) E.L.T. 424 the Tribunal held that where the assessee had written a clear letter to the Superintendent about their claim for refund, the formal claim made later could not be held as barred by limitation.

Section 11B very clearly stated that an application for refund had to be made within the expiry of six months. A format of such application has also been prescribed. In the face of this also, the Tribunal held that a plain letter would stand in the place of a formal claim. In this case, the situation was different inasmuch as

a formal declaration has also been made pertaining to the inputs. With this observation and expressing the hope that the Id. Commissioner in future would exercise his good judgment in making applications under Section 35G of the Central Excise Act, 1944, we dismiss the reference application.

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