

Dhar Textiles Vs. Commissioner of Central Excise

Dhar Textiles Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/16716

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-10-1999

Reported in : (2000)(116)ELT142TriDel

Appellant : Dhar Textiles

Respondent : Commissioner of Central Excise

Judgement :

1. Modvat credit of Rs. 67,31,632/- taken by the appellants herein (who are manufacturers of textiles falling under Chapter Headings 52, 50, 60, 61 and 63), prior to 23-7-1996, has been disallowed on the ground that such credit had been taken prior to installation of the goods in the factory and commencement of production, in contravention of Rule 57Q(2) of the Central Excise Rules, 1944.

2. The Adjudicating authority has however, held that credit would become available for utilisation after installation of machinery and commencement of production. The above mentioned amount includes an amount of Rs. 8,17,006/- taken on goods like Insulated wires and cables, Air-Conditioners, Electric Motors, Electric Apparatus, Parts of Cooling tower and Steel tanks and vessels, which has been disallowed totally i.e. this credit has been held to be inadmissible even after commencement of production, reason being that the items`above mentioned do not qualify as capital goods in terms of Rule 57Q. A further sum of Rs. 7,96,675/- (also included in the amount of Rs. 67,31,632/-) has been disallowed totally on the ground that it has been taken on capital goods which are exclusively used for manufacture of goods falling under Chapter 52 which came to be specified as final

products under Rule 57Q only on 23-7-1996. In addition, a penalty of Rs. 1,50,000/- has been imposed on the appellants. Hence this appeal.

3. We have heard both the sides. Credit of Rs. 8,17,006/- is admissible in the light of the Tribunal's decisions listed below in which it has been held that the items on which the above mentioned amount of credit has been denied, are capital goods and entitled to credit: 3. Grasim Cement, [1997 (96) E.L.T. 354] Electric Motors, Electric Apparatus 3. Credit of Rs. 7,96,675/- has been availed on Sizing machines and Weaver beams which have been found to have been exclusively used for manufacture of goods falling under Chapter 52. Goods falling under Chapter 52 were specified as final products under Rule 57Q only on 23-7-1996 but credit had been taken by the appellants before that date.

The finding of the Adjudicating Authority on the reason for dis-entitling the appellants to credit of this amount are clearly in accordance with the legal provisions and we therefore, reproduce the same hereunder : "Chapter 52, not having been specified among final products under Rule 57Q, till 23-7-1996 credit of duty paid on capital goods, exclusively used for manufacture of goods of Chapter 52 was not available to them. Party has pleaded that such capital goods are common for the manufacture of Chapter 52 goods as well as those falling under 58 to 63 which they intended to manufacture, as manufacture of grey cotton fabrics was essential for manufacture of goods of Chapters 58 to 63. As Rule 57R(2) provided that credit of specified duty in respect of any capital goods shall not be denied or varied on the ground that any intermediate product came into existence during the course of manufacture of the final product (goods of chapter 58 to 63 in their case) and that such intermediate product are for the time being exempt (cotton grey fabrics in their case) from whole of the duty of excise leviable thereon or chargeable to nil rate of duty. The defence advanced by M/s Dhar Textile Mills is not acceptable as the said Rule 57R(2) is meant to protect availment of credits provided that such intermediate products are grey fabrics of Chapter 52, an intermediate product, were wholly exempted from payment of duty of excise leviable thereon. Besides Chapter 52 was not specified as a final product in Annexure to Rule 57Q. It is true that Chapter 52 was subsequently specified as final product under Rule 57Q w.e.f. 23-7-1996. Party will not still get the benefit of

credit as Rule 57Q(2)(i) specifically provides that "No credit of the specified duty paid on capital goods other than those capital goods in respect of which credit of duty was allowable under any other Rule or notification prior to the 23rd day of July 1996) shall be allowed if such capital goods were received in the factory before the 23rd day of July, 1996" emphasis supplied. In the instant case it is on record that all capital goods exclusively used in the manufacture of goods of Chapter 52 were received by the party prior to 23-7-1996. Therefore, credit of duty paid on these capital goods received earlier will not at all be available even after goods under Chapter 52 have been included among the final products specified under Rule 57Q. The credit amounting to Rs. 7,96,675/- taken on capital goods exclusively used for the manufacture of Chapter 52 goods, received before 23-7-1996, is liable for disallowance/recovery under Rule 57U of the Rules on this count." We are in agreement with the above finding which is in consonance with the language of Rule 57Q and Rule 57R(2) and accordingly uphold denial of credit of Rs. 7,96,675/-.

4. Penal action against the appellants is also justified since they took credit which was not admissible to them; however, keeping in view the fact that they had not utilised the credit and in the light of our finding that credit of Rs. 8,17,006/- is available to them, we reduce the penalty to Rs. 25,000/-.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com