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Cce Vs. Raymond Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-02-2000

Reported in : (2000)(69)ECC518

Judge : S T G.R., S Kang

Appellant : Cce

Respondent : Raymond Ltd.

Judgement :

1. Revenue has come up in appeal against the finding of the Ld.

Commissioner (Appeals) holding that the assessee was entitled to Modvat credit as the same was claimed under the transitional Rule 57H even if it was taken beyond six months of the date of the duty paying document.

2. The facts of the case in brief are that the assessee filed a declaration under Rule 57H claiming Modvat credit on the basis of the documents which were issued beyond six months. The Asstt. Commissioner adjudicating the case held that the provisions of Rule 57G shall be applicable to the case of the assessee and since the assessee had taken credit on the strength of documents which were issued more than six months earlier than the date of taking credit. The assessee filed an appeal before the Ld. Commissioner (Appeals) who after examining the provisions of Rule 57G and 57H concluded that there was no provision in Rule 57H which debarred the assessee to take Modvat credit on the strength of documents which

were issued six months before the date of taking credit. The Revenue is aggrieved by this decision stating that the provisions of Rule 57G shall be applicable to the case of the assessee also.

3. Arguing the case Shri Mewa Singh, Ld. DR submits that provisions of Rule 57G are that no Modvat credit can be taken on the strength of the documents which were issued beyond a period of six months from the date of taking credit. He submits that the Ld. Commissioner (Appeals) has wrongly held that the provisions of Rule 57G shall not apply in the case of the present respondent. He, therefore, reiterates the submissions of the Department and the findings of the Asstt.

Commissioner and prays that the appeal may be allowed.

4. Shri J.J. Bhatt, Ld. Sr. Counsel appearing for the respondents herein submits that the appellants had claimed Modvat credit under the transitional provisions of Rule 57H. He submits that Rule 57H starts with notwithstanding anything contained in Rule 57G . He submits that this clearly shows that the provisions of Rule 57G cannot be applied to the cases covered by Rule 57H. In support of his contention he cites the decision of this Tribunal in the case of Twiga Fibre Glass Ltd. v.CCE, Meerut reported in 1999 (109) ELT 659. He specially refers to para 14 of this decision. He submits that the position has been clarified in this paragraph indicating that: Since Rule 57H begins with a non-obstente clause overriding the provisions of Rule 57G, I agree with the contentions of the Ld.

Advocate and hold that the Asstt. Collector had wrongly disallowed the benefit of credit under Rule 57H (1B) and Collector (Appeals) had wrongly invoked Rule 57G in relation to the appellants' claim for Modvat credit as Vinyl Alcohol.

Ld. Counsel also submitted that his arguments finds support from the judgment of this Tribunal in the case of Cadbury India Ltd. v. CCE, Pune and the decision of this Tribunal inB Footwear Pvt. Ltd. v. CCE, Meerut . Ld. Counsel, therefore, submits that the case of the respondent is squarely covered by the aforesaid decisions of the Tribunal and prays that the impugned order may be upheld and the appeal may be rejected.

5. We have heard the rival submissions. We have perused the grounds of appeal, the evidence on record and the case law cited and relied upon by the respondent. We find that Rule 57H is a transitional rule to care for situations not covered by other Rules. It starts with a non-obstente clause. The provisions of Rule 57G are excluded and cannot be made applicable in the case of claims under Rule 57H. We find that this Tribunal analysed this requirement of Rule 57H vis-a-vis Rule 57G and came to the conclusion as cited above in the case of Twiga Fibre Glass Ltd. We also find that this view is partly supported by other decisions of the Tribunal in the cases cited by the respondent.

Following the ratio of the decisions cited by the respondent. We, find no legal infirmity in the impugned order. We, therefore, upheld the impugned order and reject the appeal.

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