Cce Vs. Senior Rubber Factory

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-10-2000

Reported in : (2000)(69)ECC682

Judge : S T G.R., S Kang

Appellant : Cce

Respondent : Senior Rubber Factory

Judgement :
1. Revenue has filed this appeal assailing the order of the Ld.

Collector (Appeals) holding: I observe that the adjudicating authority has decided the issue on the grounds that since the appellants are working under Modvat scheme, they should pay the Central Excise duty at concessional rate from the very beginning on all the excisable goods under Notification No. 175/86 dated 1.3.86 and also held that if they satisfy all the conditions as required for availing the SSI exemption benefit, the classification lists shall be approved accordingly. The appellants have relied upon the judgment of the Hon'ble Tribunal in the case of M/s. Swaraj Paints Industries v. Collector of Central Excise (MAD-CEGAT) wherein it was held that small scale concession cannot be whittled down if Modvat credit is availed on a few items but not on other items because Para (a)(i) of Notification No. 175/86 ibid page down the benefit to concessional rate of duty instead of full exemption in case where the assessee avails Modvat credit on the specified goods.

The appellants also relied upon the Hon'ble Tribunal's judgment in the case of M/s. Abhilash Rubber Works v. Collector of Central Excise (MAD-CEGAT) wherein it was held that para (a)(i) of the Notification has to be read in the context of these goods for which Modvat credit is availed of and not for other goods.

It appears that the adjudicating authority has not gone into the depth of the facts and approved the classification lists with the direction to the appellants to pay the concessional rate of duty from the very beginning under the Notification No. 175/86 dated 1.3.86 as the appellants have rightly contended that in view of the judgments of the Hon'ble Tribunal and guidelines circulated by the CBEC vide its Letter F. No. 263/32/68-CX. 8 dated 27.10.88. There is no ground to deny the small scale exemption upto clearance value of Rs. 20 lakhs in terms of Notification No. 175/86 in respect of adhesive.

2. The facts of the case in brief are that the appellants filed a Classification List effective from 1.3.92 to avail Modvat credit. On examination of the same, Excise Authorities observed that the appellant was manufacturing adhesives and Tyre Flaps. They wanted to pay Nil rate of duty for the first clearance of Rs. 20 lakhs for adhesives under Notification No. 175/86 dated 1.3.86 as amended and at the same time they wanted to avail Modvat facilities on other items namely Tyre Flaps. The Department alleged that since the appellant had opted for Modvat scheme they should pay Central Excise duty from the very start on all excisable items. Accordingly a SCN was issued and the Ld. Asstt.

Collector in the Order-in-Original observed that since the appellant is working under Modvat scheme and taking credit of the inputs, they are to pay Central Excise duty from the very beginning on adhesives also.

When the assessee filed an appeal against this Order-in-Original, Ld.

Collector (Appeals) held as indicated above.

3. Shri S.K. Das, Ld. DR arguing the case submits that the allegation of the Department is that no separate account of inputs used in the manufacture of the products cleared under Notification No. 175/86 or cleared under the Modvat

scheme was maintained. He submits that from the orders it is not clear whether the appellants had taken Modvat credit on the entire quantity of inputs used both for producing the final product cleared on payment of duty under the Modvat scheme and also that final product cleared as exempted items. He submits that it is also not evident from the records whether any reversal of Modvat credit was done in respect of the goods cleared as exempted goods. He submits that in the absence of these particulars it appears to be a fit case for remand.

5. We have heard the submissions of the Ld. DR. We have also perused the evidence on record. We note that the first issue is whether the assessee has option to avail Modvat credit on one item and simultaneously to clear another item as exempted item. We note that there are a number of decisions of this Tribunal in which it has consistently been held that the assessee has an option that when the assessee is manufacturing two different items meaning thereby two products classifiable under two chapter headings, the assessee has the option to avail Modvat credit on one item and to avail exemption on the other.

6. However, we find that from the records it is not clear as to whether the assessee was taking Modvat credit only on the inputs that were used in the manufacture of the goods cleared on payment of duty under the Modvat scheme. In case he was taking credit of the entire quantity of inputs for production both of the exempted product as also the product cleared under the Modvat scheme then at the time of clearances of the goods under the exempted category, he was required to reverse the amount of duty taken as Modvat credit on inputs. This view finds support from the judgment of the Hon'ble Supreme Court in the case of Chandepur Magnets.

7. Since the above issues are not clear nor do they appear to have been examined and decided which are essential for a decision in the case, the matter is remanded to the Commissioner (Appeals) for examining these issues and passing appropriate orders in accordance with law after extending the benefit of personal hearing to both sides.

Therefore, the appeal is allowed by way of remand.