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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-09-2000

Reported in : (2000)(120)ELT527TriDel

Appellant : Bee Chem

Respondent : Commissioner of Central Excise

Judgement :

1. The applicants, manufacturers of Silica Gel etc. falling under Chapter 38 of the Central Excise Tariff Act, were availing the facility of Modvat credit on inputs during the financial year 1994-95. They had opted out of the Modvat scheme and switched over the scheme of SSI exemption for annual clearances up to Rs. 30 lakhs w.e.f. 1-4-1995 under Notification No. 1/93-C.E. as amended. At the time of such switch-over from the Modvat scheme to the SSI exemption scheme, certain quantities of inputs were lying as such in stock. Certain other quantity of inputs were also there as contained in the finished products in stock at the time. Again certain quantity of inputs were also contained in the final products which were under processing at the time. The party had taken Modvat credit of the duty paid on all these three categories of inputs and the amounts were Rs. 520.00, Rs. 430.40 and Rs. 83,188.80 respectively. Department proposed to recover these duties and, therefore, issued a show cause notice to the applicants under Rule 57-I of the Central Excise Rules. The applicants contested the Department's proposed action. The dispute was adjudicated by the jurisdictional Assistant Commissioner. During the adjudication proceedings, the party conceded their liability to reverse

the credit taken on the inputs found as such in stock and also on the inputs contained in the finished products found in stock at the time of their switch-over to the SSI exemption scheme. The question which survived for adjudication was whether the credit to the tune of Rs. 83,188.80 taken by the party on the inputs which were under process as on 31-3-1995 was admissible to them. This issue was decided in favour of the assessee by the adjudicating authority, whereupon the Department preferred appeal to the Commissioner of Central Excise (Appeals). The Commissioner (Appeals) allowed the departmental appeal holding that the party was liable to reverse the credit taken on the inputs lying under process at the time of opting out of the Modvat scheme in terms of Rule 57H(5) (as this rule stood at that time). This order of the Commissioner (Appeals) is under challenge in the assessee's appeal now before the Tribunal. The present application is for waiver of pre-deposit of the duty amount of Rs. 83,188.80 and for stay of recovery thereof pending the appeal.

2. I have carefully considered the impugned order and connected records. I have also heard ld. Advocate Shri Amit Awasthi for the applicants and ld. DR Shri T.A. Arunachalam for the Respondent/Revenue.

Ld. Advocate has reiterated the grounds of the appeal and has emphatically submitted that Rule 57H(5) ibid did not require the applicants to reverse the credit of duty paid on the inputs which were under processing at the time of opting out of the Mod-vat scheme and that the impugned order of the Commissioner (Appeals) does not contain his reasoning for the decision. He has submitted that the applicants have a strong prima facie case on legal grounds and has, therefore, prayed for complete waiver and stay in respect of the amount of duty involved.

3. Ld. JDR has opposed the above contentions and has submitted that Rule 57H(5) (as this rule stood at the relevant time) has to be read with the provisions of Rule 57C and 57F while considering any challenge against the impugned order. His contention is that when these rules are read together, it would follow that the credit of duty taken by the applicants on the inputs which were undergoing process at the time of their switch-over from the Mod-vat scheme to the SSI exemption scheme was liable to be reversed. In support of this submission ld. DR has relied

on decision of this Tribunal (Larger Bench) reported in 1999 (30) RLT 519. The Larger Bench, in that case, held that Modvat credit taken in respect of inputs which were in stock as well as in respect of inputs used in the manufacture of final products which had become exempt was inadmissible and would have to be reversed. I have examined the full text of the order of the Larger Bench and I observe that the issue involved in the case before me has to be argued out in the light of the decision of the Larger Bench. If therefore, held, for the purposes of the present application that the issue involved is an arguable one. I, however, note that there is no plea of financial hardships in the application. But it is apparent on record that the applicants are an SSI unit. Having regard to these facts and circumstances, I allow the application conditionally. I direct the applicants to make pre-deposit of an amount of Rs. 25,000/- (Rupees twenty-five thousand only) within six weeks from today. There shall be waiver of pre-deposit and stay of recovery in respect of the balance amount during the pendency of the captioned appeal. The matter shall arise for report of compliance on 24-7-2000.

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