

Indian Plastics Ltd. and Indian Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-17-2000

Reported in : (2000)(70)ECC242

Judge : G B Deva, S T G.R., A Unni, S Kang, S Sekhon

Appellant : Indian Plastics Ltd. and Indian

Respondent : Cce

Judgement :

1. These five appeals have been referred to the Larger Bench. When these matters were called both sides submitted that the issue involved in these five appeals has already been referred to the Larger Bench earlier and in turn, the Larger Bench has answered the question as per Order No. 315-23/96-NB dated 2.2.96 in Appeal No. E/72/88 and 8 Others in the case of Machine Builders v. Collector of Central Excise, Bolpur, .

2. Shri Devnath, learned Counsel, appearing for the appellants M/s.

National Winders. Appeal No. E/1003/96-NB, submitted that this batch of appeals would also have been tagged up with the matters which have already been decided as cited above. Inadvertently these matters have been left out. Shri Sanjeev Srivastava appearing for the Revenue concedes this position.

3. In all these cases, the manufacturers of various products utilizing certain inputs claimed Modvat credit on the basis of Government order issued under second

proviso to Rule 57G(2) of the Rules. The case of the department is that since in these cases there are clear materials to show that the inputs did not suffer duty, they are outside the pale of the Government orders and, therefore, the deemed credit was not admissible. The issues involved in these cases have been analysed by the Larger Bench in the case of Machine Builders (*supra*) particularly in para 3 of the said order and the same is as under: 3. In all these cases, the manufacturers of various products utilising certain inputs exempted from duty, claimed deemed credit on the basis of Government orders issued under second proviso to Rule 57G(2) of the Rules. The stand of the Revenue is that since in these cases there are clear materials to show that the inputs did not suffer duty, they are outside the pale of the Government orders and, therefore, deemed credit was not admissible.

4. Further, the question referred to the Larger Bench has been answered in para 20 of the said order which reads as under: (i) The words "inputs are clearly recognizable as being not duty paid" comprehend all inputs on which it is patent that duty has actually not been paid for any reason i.e. rate of duty is stated to be nil rate in the Schedule to the Tariff Act, or the inputs are wholly exempt from duty or for any other reason (all the three Government orders).

(ii) The words "charged to nil rate of duty" must be understood not in the narrow sense of nil rate of duty being stated for the inputs in the Schedule to Tariff Act, but in the general sense that actually no duty has been demanded or paid. The case of inputs wholly exempt from duty would also be attracted (Government order dated 7.4.1986 and 30.5.1988).

(iii) The words "Wholly exempt from duty" would take in cases of unconditional exemption of whole of the duty payable and also conditional exemption of such duty where conditions are shown to have been satisfied.

5. In this context, paras 22 and 23 are also relevant. They are as under: 22. A manufacturer who seeks the benefit of the Government order issued under proviso to Rule 57G(2) must naturally say so, that is, take a definite stand and to the extent necessary produce documents and marshal arguments and logic to show that he is so entitled to the benefit of the order. He should also take a definite

stand that his case does not fall within the exceptions enumerated in the explanation to the Government order. Where there is an exemption notification, and if ex facie the exemption is attracted in regard to the inputs used by him, he should take a stand as to why the notification is not attracted. It is then for the Revenue to verify the claim by conducting such enquiry as is necessary, and pass appropriate orders. Where the exemption notification is conditional, the assessee has to take a stand that the conditions are not satisfied in the instant case and it is for the Revenue to conduct enquiry, and arrive at a correct conclusion. The first exception in the Government order dated 7.4.1986 is where the credit has already been availed of under any Rule or notification. To show that credit has not been taken, he has to rely on documents in his custody or power. If the reasons show that he has already availed credit, it will be for the Revenue to show that the claimant has already availed credit. The second exception is where the inputs are recognizable as being non-duty paid or charged to nil rate of duty.

In this regard also, the assessee has to take a stand and it is for the Revenue to satisfy itself that the exception is not attracted.

The third exception turns specifically on the existence of documentary evidence to show that the reduced duty has been paid and it is for the assessee to produce the documents and prove the positive fact required to be proved. But, basically it is for the person who sets up exception to prove it.

23. The mere existence of an exemption notification is not sufficient to show that the input is wholly exempt from duty or clearly recognized as not being duty paid or charged to nil rate of duty. This consequence may automatically follow in the case of unconditional exemption once it is shown that the inputs in question are attracted by the notification. In the case of conditional exemption, unless it is shown that all the conditions are satisfied in a given case, it cannot be stated with certainty that the inputs are wholly exempt or are clearly recognizable as non-duty paid or charged to nil rate of duty. It is therefore for the Revenue by conducting necessary enquiry (and it shall be the duty of the assessee to cooperate) to see if the conditions are satisfied and the exemption notification has fully taken effect in regard to the inputs in question. Revenue cannot be heard to say that it is for the

assessee to show that the conditions are not satisfied and since he had failed to do so, the exemption must be regarded as having taken effect. It has to be appreciated that in the generality of such cases, the person who clears the inputs is not the assessee, but the manufacturer of the inputs and the assessee might not have purchased the same directly from the manufacturer but might have purchased from the Bazar. When the controversy arises in the appellate forum it is for the Revenue to satisfy the appellate form that the conditions are satisfied in the given case and that the exemption has taken effect.

6. Since the issue referred to the Larger Bench in these cases has already been considered and concluded by the Larger Bench as indicated above, following the same, we answer it accordingly.

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