

**Paharpur Plastics Ltd. Vs. Collector of Central Excise**

**Paharpur Plastics Ltd. Vs. Collector of Central Excise**

**SooperKanoon Citation :** [sooperkanoon.com/18531](http://sooperkanoon.com/18531)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-22-2000

**Reported in :** (2000)(70)ECC424

**Judge :** J Balasundaram

**Appellant :** Paharpur Plastics Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. The above appeals arise out of a common Order-in-Appeal and are hence heard together and disposed of by this common order. In Appeal No. E/2687/99, the issue relates to demand of duty of Rs. 4,65,234.05 confirmed on a quantity of 45,000 kgs. Of polypropylene granules cleared by the appellants to M/s. EMR polytex without debiting duty either in PLA or RG 23A Part II. The appellants who are represented by Shri Rajesh Chhiber, learned Advocate submits that in addition to obtaining granules from the domestic market, they were also importing granules duty free under Advance Licensing Scheme and that they had not availed any Modvat credit on the above-mentioned quantity and hence were not required to debit any duty thereon. However, as seen from the Order-in Original No. 66/96 dated 29.3.96 of the Assistant Collector, the appellants had a stock of 1,01,423 kgs. of Shell K-6100 PP granules as on 1.4.93, they received 36,80,289 kgs. of pp granules during the period 1.4.93 to 31.3.94 whereas they had issued 30,79,707 kgs. during the said period, resulting in a closing balance of 7,02,005 kgs. as on 31.3.94; there were no receipts in the month of April 94; 83075 kgs.

were issued in April 94, leaving a closing balance of 6,18,930 kgs.

They received 7,13,514 kgs. of PP granules during the period from 1.1.93 to 29.10.93. Vide letter dated 17.10.94 addressed to the jurisdictional Superintendent of Central Excise, the appellants informed the Department that the said quantity was imported duty free vide Bill of Entry dated 20.8.93 which was for a quantity of 1,13,752 kgs. Thus the contention of the appellants that 45,000 kgs. cleared on 30.4.94 (the quantity on which duty demand has been confirmed) were out of a quantity imported duty free on 20.8.93 is not acceptable for the reason that the quantity of 7,13,514 kgs. lying in stock as on 31.3.94 can be said to be out of receipts on or after 29.10.93, taking into account the issues on "first in first out" basis. The RT 12 returns submitted by the appellants also shows that they were entering both duty paid as well as duty free raw materials in RG 23A Part I and thus correlation cannot be established. I, therefore, confirm the demand of Rs. 4,65,234.05 and reject Appeal No. E/2687/99-NB.2. Appeal No. E/2688/99, relates to demand of Rs. 57,990.41. Credit of Rs. 12,528.41 has been disallowed on the ground that the declaration was filed after the prescribed period of 3 months. The appellants submit that the period involved is June 94 i.e. immediately after the introduction of scheme of credit on capital goods under Rule 57Q and the Department does not dispute the genuineness of the duty paying documents in respect of the goods in the factory and use thereof by the appellants in their factory, and they, therefore, urge that the above-mentioned credit amount should be held to be available to them.

My attention has been drawn to the decision of the Tribunal in the case of Collector of Central Excise v. Multi Metals Ltd. reported in 1999 (31) RLT 683. In this case, the assessee/respondents have been held to be eligible to credit even though there was a delay of more than 3 months after the receipt of the capital goods in filing the declaration under Rule 57T of the Central Excise Rules. This decision in turn relies upon the earlier decision in the case of M/s. Greysam & Co. v. Collector of Central Excise, New Delhi reported in 1997 (18) RLT 499.

Learned DR has not brought to my notice any decision to the contrary.

Hence following the ratio of the orders cited supra which are directly on the issue in dispute, I set aside the denial of credit of Rs. 12,528.41.

3. Credit of Rs. 4576 has been disallowed on the ground that the appellants had not filed any declaration for Hytherm 500 and HDPE Retreader, the goods on which credit was availed. It is their submission that Hytherm 500 is a machine oil and machine oil had been declared by them, and that HDPE Retreader is used as thinner and declared as thinner in the 57Q declaration and, therefore, it cannot be said that they did not file any declaration before taking credit. The above submissions have not been rebutted by the Revenue. Hence accept the appellants' contention that the declaration for machine oil and thinner covers the two items in dispute, I set aside the denial of the credit of Rs. 4576.

4. Credit of Rs. 40,769 has been disallowed on thinner and double sided adhesive tapes on the ground that the appellants had declared these two items as capital goods. They submit that in any event, these items are inputs within the meaning of Rule 57T should be accepted as declaration for inputs under Rule 57A. I see force in the above contention and hence accept the same. I hold that the appellants are entitled to credit of Rs. 40,769.

5. Credit of Rs. 117 has been disallowed as representing excess credit against invoice No. 35 dated 5.10.94 because pro-rata duty paid by the manufacturer is Rs. 1152 against which the appellants availed credit of Rs. 1269. The denial of this amount is not disputed by the appellants as seen from paragraph 4 of the grounds of appeal. Hence I uphold the denial of credit of Rs. 117. In the result, but for confirmation of the denial of credit of Rs. 117, I hold that the appellants are eligible to the remaining amount of Rs. 57,873.41. This appeal is partly allowed.

6. Appeal No. E/2689 /99 relates to denial of credit of Rs. 80,141 availed during the month of October 94 on sweep waste granules on the ground that they had cleared 8250 kgs. of LDPE granules vide invoice dated 29.10.94 in the garb of sweep waste granules on the value of Rs. 1.93 per kg. by debiting duty of Rs. 4777, whereas they availed credit @ Rs. 34.31 per kg. The appellants' contend that the quantity of 8250 kgs. is out of the stock on which Modvat credit has not been availed and thus they are not required to reverse the credit. They are,

however, unable to substantiate this contention. The above-mentioned quantity is shown in the RG 23A Part II and they are required to enter in this register, inputs on which credit has been availed. I, therefore, uphold the denial of credit of Rs. 80,141 and reject appeal No. E/2689/99-NB.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**