

C.C.E. and C. Vs. Garware Plastics and Polyester

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-2000

Reported in : (2000)(122)ELT777Tri(Mum.)bai

Appellant : C.C.E. and C.

Respondent : Garware Plastics and Polyester

Judgement :

1. Garware Plastics and Polyester Pvt. Ltd. the respondent to this application manufactures in its factory at Valuj polyester chips. It cleared major part of the polyester chips without payment of duty under Notification 217/86 by following the procedure description in Chapter 10 of the Central Excise rules to its factory at Chikalthana. At this factory, chips were used in the manufacture of polyester filament which was cleared on payment of duty. For paying this duty, the assessee utilised Modvat credit taken by it at its factory at Valuj of the duty paid on the inputs, which was required to make the polyester chips.

2. This being objected to by the department proceedings were initiated by issue of notice. Adjudicating on this notice, the Asstt. Collector disallowed the credit. The reason for disallowance was that the final product at Valuj factory was polyester chips, which it had cleared at nil rate of duty under Notification 217/86. Therefore the provisions of rule 57C, which prohibits the credit being taken when the final product is cleared nil rate of duty, would come into play.

3. The assessee appealed this order. The Collector (Appeals) found that the decision of the Tribunal in *Bajaj Tempo Ltd. v. CCE, Pune 1994 (69) E.L.T. 122* was to the effect that where goods are cleared by an assessee, availed of Notification 217/86 with respect to another factory belonging to it and therefore utilised as provided in notification, the provisions of Chapter 10 the credit cannot be denied.

The Tribunal reasoned that Notification 217/86 was issued to extend the concept of Modvat credit to goods captively consumed in the factory of their production. It was intended to avoid payment of duty in each intermediate stage and the consequent taking of credit. Therefore, it said, it ought to be read in harmony with the provisions of that rule relating to Modvat. In that situation, it said, invoking the provision of rule 57C to deny credit would be contrary to the intention of the Modvat scheme.

4. On an application made by the Commissioner, the Tribunal has referred to the Bombay High Court the question of law arising out of its order in 1995 (80) E.L.T. 531.

5. It is necessary to note on this point that there is some error of fact in the Tribunal's order and the Asstt. Collector's order. Both of them say that the final product manufactured at the Valuj factory is polyester film. The Collector (Appeals) has said that the final product manufactured at the factory at Valuj and cleared at Chikalthana is polyester chips. Both sides are agreed that it is polyester chips that are manufactured at Valuj for conversion there into films. Both sides are also agreed that in reference to the proposal in the appeal, the question that has been referred in the Tribunal in *CCE v. Bajaj Tempo Ltd.* is more appropriately referred.

6. Accordingly the following questions are to be referred to the High Court.

(i) Whether in the facts and circumstances of the case, the Tribunal has erred in holding that Modvat credit of duty paid on basic inputs used in the intermediate product (intermediate inputs) cannot be denied by applying Rule 57C of the Central Excise Rules, 1944, in respect of removal of inputs from one factory to another under the provisions of Notification No. 217/86 as amended by Notification

No. 97/89 by following Chapter-X procedure of the Central Excise Rules, under which payment of duty on the ultimate final product is ensured? (ii) Whether in the facts and circumstances of the case, Rule 57C has to be strictly construed disregarding the fact that Notification No. 217/86 is essentially based on Modvat scheme and the amendment carried out by way of Notification 97/89 was to facilitate such removals from one factory to another of the same manufacturer without payment of duty, so long as it is ensured that the ultimate final product pay duty? (iii) Whether in the facts and circumstances of the case, removals under Notification 217/85 can be construed to be analogous to be removals of intermediate inputs under Notification 217/86, for Court. applying the ratio of the larger bench decision of the Tribunal in Kirloskar Oil Engines reported in 1994 (73) E.L.T. 835.

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