

Commissioner of C. Ex. Vs. Deepak Vegetable Oil Inds.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-17-2000

Reported in : (2001)(127)ELT817Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Deepak Vegetable Oil Inds.

Judgement :

1. The respondent to this appeal manufactures vegetable product. Its claim for refund of Modvat credit of duty paid on tin plate used for manufacture (by its job worker) of tin containers in which the vegetable product was to be packed was disallowed by the department. At a subsequent stage in the proceedings the Tribunal by order dated 4-2-1997 held that tin plate was an input and the duty paid on it was available as Modvat credit to be utilized as input in the manufacture of vegetable products. In the meantime the duty on the vegetable product was withdrawn in the budget of 1996-97.

2. Consequent to the Tribunal's order the assessee claimed the refund of the duty of the Modvat credit on the ground that credit could not henceforth be utilized towards payment of duty on the final product.

The Asst. Commissioner rejected the claim on the ground that there is no provision of cash refund in Modvat credit. On appeal from this order, the Commissioner (Appeals) ordered grant of cash refund relying on the order of the Tribunal.

3. The challenge to this order in the appeal before us by the department is on three grounds. The first ground, that the respondent manufactured other final product, acid oil on which duty is payable, is not supported by any evidence. The Commissioner (Appeals) has found at page 6 of his order that the respondent did not manufacture any other final product than vegetable product. A bare statement that this is wrong cannot be accepted. The second ground that the provisions of Section 11B of the Act are meant for claiming duty and not Modvat credit, is itself contradictory to the rules. Rule 57A itself indicates that Modvat credit itself is duty. It is credit of the duty paid inputs, which, is utilized for a payment of duty on the final product.

More specifically proviso under Sub-section (2) of Section 11B excludes from the operation of the sub-section, refund of credit of duty paid on excisable goods used as input thus indicating that Sub-section (2) includes Modvat credit.

4. The third ground is that there is no provision in the rules to give Modvat credit. In two cases, the Tribunal had ordered cash refund of Modvat credit or proforma credit. In *Sandoz (India) Ltd. v. CCE*, 1990 (50) E.L.T. 403 the Tribunal had noted (paragraph 12) of its order the decision of the Tribunal in *MRF Ltd. v. CCE* in which where the provision of 201/79 were not in force and credit would not be availed of. The Tribunal ordered payment of refund in cash or by cheque.

Following that decision it had ordered payment of that amount by cheque to the assessee. In *CCE v. Orient Paper Mills* - 1994 (73) E.L.T. 648 the Tribunal it was held that "The provisions regarding nonpayment of refund of Credit has to be read down and confined to normal cases where availment of Credit for utilisation for the payment of duty is possible not in cases where such availment is rendered impossible of fulfilment by action of the Department where the remedy under Section 11B(2) proviso (c) will provide the relief to the manufacturer" had cited these decisions of the Tribunal holding this view.

5. The position that emerges then is that where, by reason of the department's action or default the manufacturer is unable to avail of the Modvat credit which he was entitled to, it is in order to give him relief following the order of the Tribunal by giving relief in cash. In the case before us it was due to no fault of the assessee

that the credit was denied. The assessee was thus compelled to pay the duty which was otherwise payable from the Modvat credit account by cash i.e.

from the personal ledger account. Had the credit not been denied the assessee would not have been required to pay the cash and would have saved the amount in cash. It is therefore appropriate in a situation where credit cannot be utilised in the payment of duty that the relief to the assessee is paid by cash. This is what the Commissioner (Appeals) has done.

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