

Teksons Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-07-2001

Reported in : (2002)(80)ECC189

Appellant : Teksons Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. This appeal is against a de nova proceeding initiated and confirmed by the Commissioner. The allegations confirmed against the appellant are: a) In respect of inputs removed from the factory for job work which have not been properly accounted for by way of receipt and utilisation in the manufacture of the final product without following the proper procedures under Rule 57F(2) amounting to Rs. 7,79,670/-.

b) In respect of rejected and returned goods which were not used as inputs amounting to Rs. 14,561/-.

c) In respect of inputs without filing modvat declaration under Rule 57G amounting to Rs. 6,422/- d) Penalty under Rule 173Q and Rule 9(2) of the Central Excise Rules, 1944.

2. After hearing both sides and considering the material on record and the submissions made before me, I find: i) Certificates from the Chartered Accountant as regards the receipt of the goods removed under Rule 57F(2) for job working to

M/s.

Indian Smelting & Refining Co. Ltd. and others have been produced before me; ii) Another photocopy of a verification of documents conducted vide File No. CX/RIV/TH-III/TEKSONS/96 dated 07/02/1996 by the Range Superintendent, in charge of Range IV, Division III, Bombay III, confirming that the goods removed to Indian Smelting & Refining Company Ltd., and others were received back and documents existed for due verification of the same.

3. From these documents produced I find that no purpose would be served by remanding the matter once again to the Commissioner for readjudication. I find that a plea being made before me, that relevant documents produced to substantiate the claim of the appellant were not considered by the Commissioner. When these documents, i.e., certificates of the chartered accountants and the verification report of the Range Superintendent are considered, to my mind, the allegations in respect of inputs removed from the factory for job work under Rule 57F(i)(ii) do not survive.

4. As regards the rejected and returned goods i.e., radiators, the same are certified to have been received back. There is no certification that they were used for further processing. In any case that was not the allegation in the show cause notice. The use of final products which was received back being returned, have been permitted to be eligible inputs by the Tribunal in their decisions in CCE v. Tine Manufacturing Co. 2000 (119) ELT 290 and Alcobex Metals Ltd. v. CCE 1992 (68) ELT 146. Being bound by these decisions I would consider no infirmity in availing of credit of Rs. 14,561/- denied by the lower authorities.

5. As regards the credit of Rs. 6,422/- availed without filing a declaration under Rule 57F the claim of the appellant that goods were found in the same chapter induces me to consider that denial of credit of Rs. 6,422/- which is caused in this case due to lack of declaration filed as far back in 1986 is substantiated. I do not find any reason to deny credit on the ground as arrived at. I find that the denial of credit as held by the lower authority cannot be upheld. I find no reason for imposition of any penalty under Rule 173Q.6. As regards the penalty imposed by the Commissioner under Rule 9(2) I find that Rule 9(2) penalties would be

imposed only when goods are cleared clandestinely and this would be final products as excisable goods and not modvat inputs. Imposition of penalty under Rule 9(2) for a misnomer allegation of modvat credit is not called for.

7. In view of my finding the order is set aside and the appeal is allowed.

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