

Cce Vs. Ipf Vikram India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-2002

Reported in : (2002)(103)LC381Tri(Delhi)

Judge : S T G.a., P Bajaj

Appellant : Cce

Respondent : ipf Vikram India Ltd.

Judgement :

1. This appeal has been filed by the Revenue against impugned Order-in-original dated 31.10.2000 vide which the Commissioner has dropped the demand of Rs. 23,21,245.09 against the respondent.

2. The respondents are engaged in the manufacture of detergent. They are receiving detergent powder in bulk from M/s. Hindustan Lever Ltd. for re-packing the same in small packings under brand name of either Sunlight Detergent powder or 'Surf' of M/s. Hindustan Lever Ltd. They are paying duty on such small packing under the category of maximum retail price. They are paying duty on such small packing under the category of maximum retail price. They also availed modvat credit of the disputed amount. They were, however, served with show cause notice that they did not show any wastage either in RT-12 returns or in RT-23A Part-I account maintained by them. Therefore, they could not avail modvat credit on the inputs gone in waste while re-packing the bulk detergent powder in small packings and they were asked to reverse the credit under the erstwhile Rule 57I(1)(ii) of the

Central Excise Rules.

In reply to that notice, they submitted that as per Trade Notice issued by Bombay-I Commissioner-ate dated 17.6.1998 No. 93/98, bulk powder could be treated as semi-finished product and it could become finished product on transferring the same in small containers. Therefore, the allegation in the notice that no manufacturing process was involved in repacking were baseless. They also averred that show cause notice issued was time barred and there had been no suppression of material facts by them from the department and as such, the extended period of limitation could not be invoked.

3. The Commissioner accepted the version of the respondents and dropped the duty demand against them through the impugned order.

4. The learned JDR has contended that under Rule 57-D of the Rules, the modvat credit could not be claimed on the bulk detergent powder which had gone in waste while transferring in the small packings, as the same could be claimed only on the final product and that the small packing could not be said to be final product of the respondents, because no process of manufacture was involved therein.

5. On the other hand, the learned Counsel has reiterated the correctness of the impugned order.

7. In the show cause notice, it had been nowhere alleged that the modvat credit was not admissible to the respondents on the bulk detergent powder which had gone in waste while re-packing in small containers. All that alleged was that since modvat credit on the inputs Le. detergent powder shown as wastage, had no legal backings, and as such why it should not be disallowed. But on what account and for what reason had no legal backing had not been detailed in the show cause notice. However, from para 2 of the show cause notice, all that could be inferred is that by legal backing the department meant that since there was no manufacturing process other than the repacking involved, no scope for any waste was left and waste was not shown in RT-12 returns or in RG-23A Part-1 account. But bare perusal of the impugned order of the Commissioner shows that there were no allegations that wastage arising during the course of repacking was clandestinely

cleared and removed by the respondents. The respondents even produced letter dated 24.1.1996 issued by M/s. Hindustan Lever Ltd. who supplied bulk detergent powder permitting wastage up to 0.5% for powder and 1% for packing material. The Commissioner has also referred to the CBEC's letter No. 267/136/87-C. Ex. 8 dated 15.10.1998 wherein it had been clarified that modvat on the inputs should not be denied on the ground that part of the inputs is contained in the slugs and other invisible losses. He has also referred to the judgment of Allahabad High Court in Varuna Sulphonators (P) Ltd. v. Union of India wherein it had been observed by the Hon'ble High Court that modvat scheme did not emphasis that during manufacturing process, entire duty paid inputs must be actually consumed but the emphasis was on the use of the duty paid inputs in the manufacturing of the final products. The judgment of the Tribunal in that regard in Rishi Iron and Steel Ltd. v.CCE, Raipur had been also referred and relied upon by the Commissioner in the impugned order.

8. The learned SDR has not been able to dispute that the process of transferring/repacking the bulk detergent powder into small repackings amounted to manufacture under the excise law. Therefore, under Rule 57D of the Rules, the credit on the inputs gone in waste during this process of manufacture could not be denied to the respondents.

9. The Commissioner after following the CBEC's circular, judgments of the Allahabad High Court and the Tribunal, in the above referred cases and keeping in view the provisions of Rule 57-D of the Rules, in our view, had rightly dropped the duty demand against the respondents. We do not find any illegality in his impugned order and as such, the same is upheld.10. Consequently, the appeal of the Revenue being without merits is ordered to be dismissed.

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