

Cce Vs. Sunil Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-2002

Reported in : (2002)(104)LC467Tri(Mum.)bai

Judge : J Balasundaram

Appellant : Cce

Respondent : Sunil Industries

Judgement :

1. In this case, the respondents herein filed a declaration under Rule 57G of the Central Excise Rules, 1944 for the input "Acrylic Plastic scrap in crushed form" and took credit of additional duty of Customs (CVD) amounting to Rs. 1,20,801 against B/E dated 17.11.1993. By letter dated 22.3.1994 of the Supdt. of Central Excise, they were directed to reverse the credit taken. They replied maintaining that credit was correctly taken and hence was not reversible. By order dated 13.5.1994, the Asstt. Commissioner of Cen. Excise disallowed modvat credit and directed its reversal and this was done by the respondents by debit entry made under protest in their RG. 23A Part.II. The respondents challenged this before the Commissioner (Appeals) and succeeded. Hence, this appeal by the Revenue.

2. We have heard both sides. We find that the lower Appellate Authority has held that under Rule 57I(1) of the Central Excise Rules as it stood at the relevant time, it was mandatory to issue show cause notice for disallowing of modvat credit; that the respondents had filed a declaration under Rule 57G that M.M. Monomer on

which credit was sought to be denied was intermediate product in or in relation to the declared final product on which duty was paid and applying the ratio of the decision of the Hon'ble Madras High Court on Reference Application in the case of Ponds (India) Ltd. v. CCE , she held that the case was governed by the provisions of Rule 57D(2) which provides that credit of specific duty allowed in respect of any inputs shall not be denied on the ground that any intermediate products have come into existence during the course of manufacture of the final product and that such intermediate products are for the time being exempt from the whole of the duty of excise leviable thereon.

3. In the entire appeal filed before the Tribunal, the Revenue has not disputed the applicability of the above mentioned High Court decision to the facts of the present case. Since the Commissioner (Appeals) has followed the ratio of the directly applicable decision, which has not been challenged as inapplicable, there is no reason to interfere with the impugned order. Accordingly, I uphold the same and reject the appeal.

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