

Srf Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-11-2002

Reported in : (2002)(105)LC116Tri(Chennai)

Judge : S Peeran, R K Jeet

Appellant : Srf Ltd.

Respondent : Cce

Judgement :

1. This appeal is preferred by M/s SRF Ltd, the appellants herein against the order in Original No. 06/99 dated 30.11.1999 passed by the Commissioner of Central Excise, Chennai by which he has confirmed a duty demand of Rs. 1,01,73,524/- under Rule 9(2) of the CE Rules, 1944 read with Section 11A of the CE Act, 1944 and Section 3(3) of the AED (GSI) Act, 1957 being the AED payable on the unprocessed tyre cord fabric which were cleared during the period from June 1998 to December 1998. The Commissioner has also imposed a penalty of Rs. 5,00,000/- on the appellants.

2. Brief facts of the case are the appellants are engaged in the manufacture of Nylon Chips, Nylon Filament Yarn and Nylon Tyre Cord fabrics (both unprocessed and processed) falling under chapter 39, 54 and 59 of the schedule to the CET, 1985. They also availed themselves of the credit of specified duty paid on the inputs used in the manufacture of their final product under Rule 57A of the CE Rules, 1944 read with Notification No. 24/94-CE(NT) dated 20.5.1994 as amended

on capital goods used in the manufacture of final products under Rule 57Q of the CE Rules 1944. The term specified duty includes Additional Excise Duty (AED) payable under Section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957. They also manufacture unprocessed Tyre Cord Fabrics (UTF) and captively consume the same in the manufacture of Processed Tyre Cord Fabrics (PTF). They also clear the UTF as such for home consumption on payment of duty. They also procure UTF from the market for the manufacture of PTF. The UTF consumed in the manufacture of PTF is exempted from whole of duty payable under Section 3 of the CE Act, 1944 vide Notification No.67/95-CE dated 16.3.1995 as amended. However, they pay AED payable on UTF since no exemption from AED is available for captive use. The AED paid on unprocessed fabric is taken as credit under Rule 57A of the CE Rules read with Notification No. 24/94-CE(NT) dated 20.5.1994 as amended. However, PTF' manufactured out of the UTF is exempted from AED vide Sl. No. 27A of Notification No. 9/96-CE dated 23.7.1996.

3. On verification of the accounts of the appellants it was noticed that they have wrongly availed credit of AED paid on UTF consumed captively, and purchased from market for payment of AED on UTF cleared for home consumption. Proceedings were therefore initiated against the appellants by issue of show cause notice demanding duty of Rs. 1,01,73,524 and for imposition of penalty under Rule 173Q of CE Rules, 1944. After considering the reply furnished by the appellants and after hearing their Advocate accompanied by their representatives, the impugned order came to be passed demanding duty and imposing penalty as noted above. It is against this order of the Commissioner, the appellants have come in appeal before us on the following grounds: (a) proviso to Rule 57F(12) enables the appellants to utilize the credit of AED paid on the UTF captively consumed (as input) for payment of AED on the UTF cleared for home consumption as final product. The proviso to this Rule carves out an exception to the main rule and the said proviso reads as under: Provided that notwithstanding anything contained in Rule 57A and the notifications issued thereunder the credit of specified duty allowed in respect of any Inputs may be utilized towards payment of duty of excise on any other final product, whether or not such inputs have actually been used in the manufacture of such other final product, if the said inputs

have been received in the factory of production on or after the first day of March 1997.

In order to apply the proviso to Rule 57F(12) the conditions to be satisfied are: (1) inputs on which the credit of duty paid is taken have been declared as "input" in the declaration under rule 57G; (2) the credit so taken should be utilized for payment of duty of excise on the final product in which it is used; (3) the final product for whose payment of duty, the input credit has been utilized should have been declared as final product under Rule 57G; In the present case the above requirements under proviso to Rule 57F(12) are satisfied.

(b) The input on which credit has been taken viz. UTF has been declared as an input in the declaration filed by the appellants under Rule 57G. Against the input UTF, PTF has been declared as final product.

(c) The credit of AED paid on the UTF used captively in the manufacture of PTF has been utilised towards payment of AED on the UTF (final product) in which the UTF is not used.

(d) UTF cleared for home consumption has been duly declared as final product in the Modvat declaration filed under Rule 57F. (e) According to Rule 57F(12)(a) credit of AED paid on the UTF can be utilised for payment of AED on any of the final products in which the UTF is intended to be used viz. PTF.4. Shri V. Sridharan, learned Counsel appearing for the appellants submitted that inasmuch as the appellants have satisfied the conditions laid under Rule 57F(12) and proviso thereto and hence the impugned order is liable to be set aside. He also cited the order passed by this Bench in the appellants' own case vide final order No. 1962/2001 dated 8.11.2001 and submitted that the issue is no longer res integra and is covered by the above decision in their own case and he sought for setting aside the impugned order and allowing the appeal.

5. Shri GS Menon, learned SDR for the department defended the impugned order. He submitted that in the present case the appellants are taking credit of additional excise duty paid on UTF either manufactured within their factory or purchased from the market. Therefore, the UTF is an input and the credit of duty paid on it

can be utilised for payment of duty on any finished excisable product. As against this, they are utilising this credit for payment of duty on UTF itself cleared as such. Therefore, the UTF cannot act as both input and as final product simultaneously. Therefore there is violation of Rule 57F which lays down that input should be used in or in relation to the manufacture of final product. The procedure adopted by the appellants is to pay AED on the UTF and take credit of the same immediately. Thereafter they utilise the credit of AED on UTF for payment of AED on the same goods cleared for home consumption. Thus they are not paying additional excise duty on the UTF. Since UTF cannot act as an input and a final product, the provisions of Rule 57F(12) are not relevant to the present case. He referred to the detailed finding recorded by the adjudicating authority and sought for dismissal of the appeal.

6. We have carefully considered the submissions made by both the sides.

We find that the issue is no longer res Integra as identical issue came up for consideration before this Bench in the appellants' own case wherein we have allowed the appeal of the assessee appellants vide final order No. 1962/2001 dated 8.11.2001. The finding arrived at by this Bench in para 4 to 6 are reproduced herein below: 4. We have carefully considered the submission made by both the sides and we are of the considered opinion that the issue is no longer res integra and has been decided by the Delhi Bench in the case of Modi Rubber Ltd. and Ors. v. CCE Meerut reported in 2000 (39) RLT 830 (Trib.) : 2000 (92) ECR 333 (I). The Delhi Bench of the Tribunal in para 6 and 7 held as under: 6. We have heard the submissions of the Id. Counsel as also the submissions of the Id. SDR. We find that the issue for our determination is whether Sub-Rule (12) of Rule 57F permits utilisation of credit of Additional Excise Duty for payment of Basic Excise Duty payable on tubes. We note that Rule 51 A. Notification 5/94 and Rule 57F(12) are relevant for purpose of this enquiry. We note that Rule 57A provides for taking credit of specified duty paid on specified inputs and the credit so taken can be utilised for payment of Central Excise Duty on specified inputs.

7. Notification No. 5/94 provides for among other things, utilisation of specified duty for payment of specified duty meaning thereby Additional Excise Duty can be

paid only out of credit of Additional Excise Duty. However, we find that there is Rule 57F(12) which has got two clauses-the 'non obstante' clause as also enacting clause. The non obstante clause says that without caring for the provisions of Rule 57A and the Notification issued thereunder, in the instant case the Notification No. 5/94 or ignoring the provisions of Rule 57A and Notification No. 5/94. We note that the 'enacting' clause is that the credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise duty on any other final product whether or not such inputs have actually been used in the manufacture of such other final product, if the said inputs have been received and used in the factory of production on or after the first day of March 1997.

Examining the facts of the case before us in the light of the requirement of the enacting clause, we find that the credit in the instant case is the credit of Additional Excise Duty paid on tyre-cord fabric. The credit so taken of the Additional Excise Duty is utilised towards payment of Basic Excise Duty on tubes. Tyre Cord fabric is not used as an input in the manufacture of tubes. Tyre Cord fabric has been received and used in the factory of production on or after first day of March 1997. Thus, we find that all the requirement of 'enacting' clause of Rule 57F(12) are fully complied with. In this view of the matter, we find that the impugned order is erroneous, the same is, therefore, set aside and these appeals are allowed.

From the above paragraphs, we find that the Tribunal considered the issue and held that all the requirements of enacting clause of Rule 57F(12) are fully complied with. In this view of the matter, "we find that the impugned order is erroneous, the same is, therefore, set aside and these appeals are allowed.

5. The judgment rendered by the Delhi Bench of the Tribunal in Modi Rubber Ltd. was followed by this bench in the case of Madura Coats Ltd. v. CCE, Trichy arising out of the same Commissioner (Appeals)' Orders-in-Appeal No. 82-85/2000-MDU-(GVN) dated 16.10.2000 [see 2001 (95) ECR 86 (T)] and set aside the Commissioner (Appeals)'s order by allowing the appeals.

6. Following the ratio of this decision as well as the decision of the Delhi bench in the case of Modi Rubber Ltd. and Ors. v. CCE, Meerut (supra) and also the

judgment rendered by this bench in the case of Madura Coats Ltd. v. CCE Trichy vide Final order No. 1801-1804/2000 dated 13.12.2000 [2001 (95) ECR 86 (T)], we set aside the order of the Commissioner (Appeals) and allow the appeal and direct consequential relief in accordance with law. The department shall allow them to utilise the accumulated Modvat credit on Additional Excise Duty which was paid on unprocessed fabrics plus towards payment of BED/AED on any of the final product so produced by them in their factory.

7. In view of the proviso to Rule 57F(12), noted above, there is no one to one correlation prescribed under the Modvat Scheme with regard to utilisation of Modvat credit with effect from 1.3.1997. Therefore, on this count also, the credit taken has been rightly utilised by paying duty on those goods which were cleared as such.

8. We find no reason to take a different view than the one we have taken in the above order. Therefore, following the ratio of our above order we set aside the impugned order and allow the appeal

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