Commissioner of Central Excise Vs. Padmini Polymers

Commissioner of Central Excise Vs. Padmini Polymers

SooperKanoon Citation : sooperkanoon.com/28908

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-2002

Reported in : (2003)(151)ELT358TriDel

Judge : S T G.R., P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Padmini Polymers

Judgement :

1. These are two appeals one is filed by Revenue against the impugned order dropping the proceedings initiated against M/s. Padmini Polymers Ltd. and holding that an amount of Rs. 50 lakhs deposited on 22-10-97 cannot be appropriated towards the duty demanded in the SCN and also dropping proceedings against Shri Vivek Nagpal and Shri R.K. Chawla.

The assessec has filed cross appeal against confiscated raw material and its redemption on payment of Rs. 30,000/- as fine in lieu of confiscation and imposition of penalty of Rs. 50,000/-. Since the two appeals arise out of the same order, they were heard together and are being disposed of by this common order.

2. The facts of the case briefly stated are that M/s. Padmini Polymers are engaged in the manufacture of articles of plastics falling under Chapter sub-heading 3923.90 of the Central Excise Tariff Act, 1985. It was alleged that they were wrongly availing the benefit of duty free clearances of the goods in terms of

Notification No. 4/97, dt. 1-4-97.

Scrutiny of the seized records, classification list/declaration it was noticed that M/s. Padmini Polymers had described the goods as articles for the convenience of packing goods of plastic and other items, the rate of duty applicable had been shown as Nil. A SCN was issued to M/s.

Padmini Polymers and others asking them to explain as to why Central Excise Duty amounting to Rs. 7,69,90,751/-should not be demanded and recovered from them and why they should not be asked to pay interest @ 20% on delayed payment of Central Excise Duty and why penalty should not be imposed.

3. Before ld. Commissioner while adjudicating the case, the appellants in reply to the SCN contended that master batch was used for imparting colour to the containers required by them while PP bags were used as packing material; that these were not principal raw materials, therefore, they were not required to be entered by M/s. Padmini Polymers in Form IV; that only such quantity of the master batch and PP bags as were being used in the manufacture of containers cleared after payment of duty were shown in the RG. 23A Part I.4. It was further contended by them that the contention of Revenue that an assessee manufacturing goods under Chapter 39 cannot remove both dutiable and exempted goods from the same factory was not borne out by any of the sub-rules either of Rule 57C or of Rule 57CC; that what was required was that the manufacturer should maintain separate inventory and accounts of the receipt and use of inputs for the purpose of manufacture of exempted goods; that the Rules were silent on the aspect of the storage. It was further contended that manufacturers of goods classifiable under Chapter 39 of CETA, 85 were expressly exempted from the applicability of Rule 57CC(1); that procedural formality to be followed by such manufacturers was contained in Rule 57CC(9) which was to maintain separate inventory and accounts of Modvatable raw materials used in the manufacture of exempted goods; that this provision had been complied with by the assessee inasmuch as a separate and distinct RG 23A Part I register had been maintained in respect of such inputs. Ld.

Commissioner after considering their submissions and examining the evidence on record as also the case law, dropped the proceedings initiated against M/s. Padmini Polymers confiscated plastic containers valued at Rs. 68,98,764/-; confiscated raw material valued at Rs. 1,27,400/- allowed it to be redeemed on payment of fine of Rs. 30,000/- imposed a penalty of Rs. 50,000/- and on M/s. Padmini Polymers held that the amount of Rs. 50 lakhs deposited on 22-10-97 cannot be appropriated towards duty demanded in the SCN and also dropped proceedings initiated against Shri Vivek Nagpal and Shri R.K. Chawla.

5. Arguing the case for Revenue Shri Mewa Singh, ld. DR submits that the ld. Commissioner has dropped the proceedings on the ground that the SCN does not bring out any evidence on violation of the condition of the relevant notification made by the assessee; that this ground is not correct; that the evidence on record has not been appreciated properly; that on some containers, M/s. Padmini Polymers were availing full exemption from Excise Duty which at the relevant time provided that exemption would be available subject to the condition that duty liability has been discharged on the raw materials and no Modvat credit for the said duty has been taken; that remaining containers were cleared on payment of duty and Modvat was availed of the duty paid on the inputs; that the SCN sought to deny the exemption on the ground that there was no segregation of the inputs which were used for making containers cleared at nil rate of duty as there was no link to establish that the inputs in respect of which no credit was taken were really the inputs which were actually used for making exempted containers; that the condition of the notification was not satisfied and duty was demanded, among other things, on such containers cleared without payment of duty.

6. Ld. DR also submitted that Modvat rules at the relevant time not only provided that no credit was admissible in respect of inputs which were exempted from excise duty but the rules also provided that where a manufacturer avails of the credit of specified duty on any inputs and he is engaged in the manufacture of any final product which is exempt from the whole of duty of excise in the same factory the manufacturer should follow the procedure set out in Sub-rule (1) of Rule 57CC. Ld.

DR also submitted that since separate inventory of both Modvatable raw material and dutiable finished goods and the exempted category of raw materials and finished goods, were not maintained, the manufacturer had failed in compliance of Rule 57CC(9).

7. Ld. DR also submitted that in para 8.12 of the adjudication order the raw material like master batch and PP bags had been referred to as minor raw materials and entry of such raw materials in the statutory documents has been treated as no fault; that the statute does not distinguish between major and minor raw materials and in its absence there is no legal ground to assign any special status to any input. Ld.

DR submitted that since inputs on which Modvat was claimed and inputs in respect of which Modvat was not claimed, were not stored separately, there was no way of ensuring that the stock entered in RG 23A Part I was not used in manufacture of finished goods cleared at Nil rate of duty.

8. Ld. DR, therefore, submitted that since it was a violation of the conditions of Notification No. 4/97 and various provisions of Rules 57C and 57CC ld. Commissioner has wrongly interpreted the notification and the Rules. He, therefore, prayed that the appeal filed by Revenue may be allowed.

9. Shri C. Harishanker, ld. Counsel arguing the case for respondent submits that it is a simple case of maintenance a separate records. He submits that all the inputs which were used in the manufacture of exempted goods were entered separately in Form IV Register as well as RG 23A Part-I. He submits that since separate accounts were being maintained for inputs used in the manufacture of exempted goods and those used in the manufacture of dutiable goods, there was no case made out by the appellants. He, therefore, prays that the impugned order passed by the ld. Commissioner may be upheld and the appeal filed by Revenue may be rejected.

10. We have heard the rival submissions. We have also perused the evidence on record. We have also perused the law cited and relied upon by both the sides as also the requirement of Notification No. 4/97 and Rules 57C and 57CC. We note

that Notification No. 4/97 completely exempts final products classifiable under Chapter Heading 79,23, 39.23 or 39-26 from duty of excise payable thereon subject to the condition that Modvat credit of duty paid on inputs used in the manufacture of such products is not availed. We note that there is no statutory embargo on clearance of part of the final products on payment of duty and part under exemption. We do not find any mistake on the part of the assessee in availing the benefit of Notification No. 4/97 only in respect of clearance of a part of the final product manufactured by them simply because a part of the final product manufactured by the assessee was cleared on payment of duty and the reminder under provision of this notification. We do not see any violation of the conditions of the notification inasmuch as the assessee had not taken Modvat credit on inputs which were used in the manufacture of exempted final product. We note that the ld. Commissioner while deciding the issue of entry of minor raw-materials in Form IV Register, placed reliance on the judgment of this Tribunal in the case of Agarwal Brothers Steel Rolling Mills, reported in 1987 (27) E.L.T. 334 which is correct.

11. We note that in the SCN a lot of emphasis has been placed on separate storage of the raw materials used in the manufacture of final exempted product and raw materials used in the final dutiable product.

The contention of the respondent herein was that the rules do not contain any such requirement of separate storage, therefore, there was no violation or contravention of any Rule. We find force in the contention of the respondent herein. We have examined the provisions of Rules 57C and 57CC and we do not see any such requirement of separate storage of the two categories of inputs. We note that under Rule 57CC(9) what is required is that separate inventory and accounts of the receipt, use of inputs for the purpose of manufacture of final products cleared under exemption be maintained. We note that the adjudicating authority has examined each aspect legally as well as factually for coming to the conclusion. Therefore, we do not see any reason to interfere with the impugned order passed by the ld. Commissioner. The same is, therefore, upheld in so far as M/s. Padmini Polymers and Shri Vivek Nagpal and Shri R.K. Chawla are concerned. The same is sustainable in law and we hold accordingly.

12. In so far as the appeal filed by M/s. Padmini Polymers Ltd. is concerned, we find that the amount of redemption fine and penalty is just nominal and the ld. Counsel appearing for M/s. Padmini Polymers in his usual fairness did not press the appeal further. Therefore, the appeal is rejected.

13. In view of the above findings both the appeals one filed by Revenue and the other filed by M/s. Padmini Polymers are rejected.